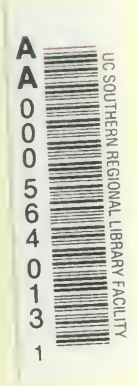

THE APPEAL

OF

KING'S COLLEGE

AGAINST

The Fellows of Eton,

RESPECTING THEIR HOLDING ECCLESIASTICAL PREFERMENT WITH THEIR FELLOWSHIPS;

Preferred A. D. 1814.

Also, THE ANSWER OF THE LATTER,

And REPLY of the FORMER,

With other DOCUMENTS relating to the said Case.

TO WHICH ARE ADDED

REMARKS,

Critical and Explanatory,

Upon Mr. PHILIP WILLIAMS's REPORT of the Pleadings in the said Case,

Which took place in the Court of Doctors' Commons, May 16th and 17th, 1815.

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INTRODUCTION.

THE Appeal of King's College against the Fellows of Eton, for holding Ecclesiastical Preferment with their Fellowships, excited at the time considerable attention amongst those connected with the two Societies, as well as many other Ecclesiastical and Collegiate Bodies, who conceived their own rights implicated in the question. A publication, therefore, of the case, was much wished, but neither of the parties felt inclined to take such a step. The Fellows of Eton, happy in an escape of which they had despaired, were fully satisfied in giving through the newspapers, publicity to the decree, which, by a variation of terms, pronounced the validity of the Dispensation, and at the same time, with studied and intentional obscurity, concealed from general notice the breach of Statute which it corrected and prohibited in future. King's College, on the contrary, meditating a second application, deemed it most prudent to abstain from a measure which might have appeared an Appeal from the Visitor to the public, and have given umbrage to the Judge, in whose sole power the decision lay.

The case, however, has appeared in print through the means of Mr. P. Williams, a Barrister, and Fellow of New College, Oxford, whose object is declared by himself to be, the rendering the case of *general* utility;

and therefore, every passage is omitted which he deemed irrelevant. But under this view of the subject, many facts and arguments having been entirely passed over, or but slightly touched upon, which would have been peculiarly interesting to those who might be supposed to take most concern in the affair, viz. persons, who are or have been connected with the two Colleges of Eton and King's, the following pages are now offered to their perusal, as containing accurate and authentic copies of all the different documents relating to the said case, in the shape in which they were originally submitted to the Visitor. To which are added, some observations upon Mr. Williams's Report, which may serve to elucidate several passages in the appeal, &c. &c. and to render the merits of the case in general more intelligible.

THE APPEAL, &c.

Copy of a Letter from the Provost and Fellows of King's College, to the Provost and Fellows of Eton College.

WE, the Provost and Fellows of King's College, being bound by our Statutes to maintain our rights and privileges, as well as to observe, and cause to be observed, such Statutes of Eton College as concern ourselves, feel ourselves called upon, in our own behalf and that of our Successors, to notify to the Provost and Fellows of Eton College an opinion entertained by us; and supported, as it appears to us, by the Eton Statutes, namely that a Fellowship of Eton is not tenable with Ecclesiastical Preferment.

But by present usage the Fellows of Eton do hold Ecclesiastical Preferment with their Fellowships; and by such practice that succession is prevented, which would take place if the Statutes remained in force.

The Livings of Eton College are very numerous and valuable: vacancies therefore in the Fellowships of Eton would frequently happen, from the acceptance of such Livings, and as the Fellows of King's stand first in eligibility, according to the Statutes, for Fellowships of Eton, their chance of election must be rendered much more probable by the frequent recurrence of such vacancies: particularly as every candidate must statutably be in Priest's Orders and unbeneficed to enable him to be a candidate.

But by the present arrangement, a system is introduced, which deprives our Members of the participation of those advantages, which the Founder intended should be mutually enenjoyed by the Fellows of both Colleges; and thereby also impedes the succession of Scholars from Eton to King's College.

As this system appears to us to be a deviation from the Eton Statutes, (and we have looked into them with due attention) we conceive it to be our bounden duty to request the Provost and Fellows of Eton would enter into an explanation on what grounds the Statute forbidding the tenure of a Fellowship of Eton College with Ecclesiastical Preferment is no longer attended to and observed at Eton, whilst the corresponding Statute remains in full force at King's College. For we are unable to find any record of a repeal having taken place in this part of the Eton Statutes by the Founder, or by subsequent Acts of Parliament. Should there be any document in the hands of Eton College of sufficient authority to sanction the introduction of the present system (of the existence of which document we are as yet uninformed) it is our earnest request, that it may be communicated to us, for the purpose of settling the point in question speedily; and without interruption to the peace and harmony of two Colleges, whose interests have been so intimately blended and connected by our common Founder.

Signed,

(L. S.) H. SUMNER, *Provost.*

King's College, Dec. 1813.

Copy of a Letter from the Provost and Fellows of Eton in answer to the above.

WE, the Provost and Fellows of Eton College, acknowledge the receipt of the Letter addressed to them by the Provost and Fellows of King's College, and notifying the opinion entertained by them, namely, that a Fellowship of Eton is not tenable with Ecclesiastical Preferment.

It must be well known to the Provost and Fellows of King's College that the usage of Fellows holding other Ecclesiastical Preferment with their Fellowships, is not of recent date: and that not only the immediate predecessors of the present Body, but very many of the Fellows of Eton have, for at least two hundred and forty years, been possessed of Parochial and other Benefices.

The Fellows of Eton have it not in their power to produce any record of a repeal having taken place in their Statutes with regard to other preferment, either by their Founder, or by subsequent Acts of Parliament, but they have, in conformity with long established usage, and in full persuasion, that their predecessors were neither so unwise, nor so unguarded, as to commit their characters and fortunes to an unsafe guidance, considered themselves as sufficiently fenced from all hazard of appeal against the validity of the tenure of their Fellowships, by the dispensation granted to their predecessors by Queen Elizabeth in the eighth year of her reign; of which instrument, bearing date June 11th, 1566, the Provost and Fellows of Eton, in compliance with the wishes of the Provost and Fellows of King's College, transmit to them a copy.

To our trusty and well-beloved the Provost and Fellows of Eton College.

"Trusty and well-beloved, We greet you well.—Forasmuch as humble sute hath been made unto us, on the behalf "of you the Fellows of that our College at Eton, that by the

To these queries the following answers were returned.—

"We are of opinion, that in the case of a Royal Foundation, where the Crown has given Statutes and appointed a Visitor: a succeeding King or Queen has no more power of dispensing with any of those Statutes, than the heir of a private Founder, in the case of a private foundation: unless there be some clause in them specially reserving such a power to the Successor. It does not appear that there is any such clause or reservation in the Statutes of Eton College; but, on the contrary, there is an express prohibition against applying for, or using any such Dispensation.

The Dispensation, procured from Queen Elizabeth, does not even affect to dispense with the oath, which the Fellows of Eton College are required to take on their admission. They are therefore bound to take it: And if they do, and avail themselves of the Dispensation, they violate their oath: if they do not take it, in the form prescribed, they violate their Statutes.

The proper remedy which the Provost and Fellows of King's College have, is an application to the Visitor.

Signed,

SAMUEL ROMILLY.
J. HEYS.

Lincoln's Inn, 23d Dec. 1813."

In consequence of this opinion the following Letter was sent to the Provost and Fellows of Eton College.

The Provost and Fellows of King's College feel themselves called upon to state, that they cannot acquiesce in the explanation given on the part of Eton College; the plea, brought forward in defence, appearing to them untenable.

As therefore the point in question between the two Colleges is of too great importance to be suffered to remain unsettled, it is the intention of King's College to apply to the Visitor requesting his decision.

King's College having taken these steps for the sole purpose of ascertaining their rights, entertain no wish, that the peace and harmony of the two Colleges should be interrupted.

Signed,

(L. S.) H. SUMNER, *Provost.*

To this Letter Eton College replied:

We, the Provost and Fellows of Eton College, acknowledge the receipt of a Letter from the Provost and Fellows of King's College, notifying their intention of requesting the decision of the Visitor, "as they cannot acquiesce in the explanation given "on the part of Eton College, the pleas, brought forward in "defence, appearing, to them, untenable."

The Provost and Fellows of Eton College, further, think it right to state, that they considered the former Letter received from the Provost and Fellows of King's College, as distinctly expressing their opinion, that a Fellowship of Eton is not tenable with *any* Preferment, and that the *only* points, in dispute between the two Colleges, were, *first*, whether a beneficed A. M. is a statutable candidate; and, *secondly*, whether an actual Fellow of Eton can statutably take and hold a Benefice, for a longer period than a year, without resigning his Fellowship.

They have read attentively that Letter, and do not find in it any expression which refers to any other real or imputed violation of their Statutes; and it must appear to the Provost and Fellows of King's College, reference being had to the answer of their Letter, that the College of Eton, in that answer, considered that the question was strictly confined to these two points.

They expected, that other communications would have

passed between the two Colleges, that both Colleges would have exchanged the opinions of their respective Counsel, that a state of the question would have been previously drawn up by the mutual consent and agreement of the two Colleges, and by mutual consent and agreement submitted to the Visitor.

That peace and harmony between the two Colleges may not be interrupted, has been and still is the earnest wish of Eton College.

Signed,

(L. S.) JOSEPH GOODALL, *Provost.*

To the Right Reverend Father in God, GEORGE, *Lord Bishop of Lincoln, Visitor of King's College, Cambridge, and of Eton College.*

MAY IT PLEASE YOUR LORDSHIP,

We, the Provost, Fellows and Scholars of King's College, beg leave to present to your Lordship the following Statement and Appeal.

King Henry the Sixth, A. D. 1440, founded a College by the name of the Blessed Marie of Etone, beside Wyndsore, for the maintenance and education of poor boys, consisting of a Provost, ten Fellows, seventy Boys, two Masters and others. The said King, A. D. 1441, founded a College at Cambridge, consisting of a Provost, seventy Fellows or Scholars, and others, which number at Cambridge was to be supplied in regular succession from his Seminary at Eton.

These two Colleges, according to the Founder's will, expressed both in the Statutes and Charter, although situate in different

places, proceed from the same stock, and issue from one source, are to be considered as one Foundation, and are bound to help each other mutuis suffragiis, favoribus, subventionibus et patrociniis. Vide Stat. 4. of King's College, and Stat. 5. of Eton College.

To shew the identity of these two Colleges, the Founder has given them Statutes, even in most part, totidem verbis the same, commanding each to have a copy of the other's Statutes, and the Provost and Fellows of each College to take an oath to observe each others Statutes, inasmuch as those Statutes or Ordinances concern themselves, "communiter vel divisim seu singulariter." Stat. 4. of King's College. All which infer a mutual bond of union, forming, as it were, one united foundation. As the advancement of the general welfare of both Colleges is enjoined by the admission oath, those measures which tend to its promotion are to be particularly forwarded, amongst which succession will appear to be the principal, if the constitution (as of one body corporate) be considered.

The seventy Boys at Eton being admissible from eight years of age, are eligible for King's College at fifteen, and become superannuated at the completion of their nineteenth year, unless removed to King's College. Vacancies therefore at King's College, for the purpose of preventing, as much as possible, such superannuation, must be advantageous to Eton: and if such vacancies can be procured from the causes called, by the 25th Statute of Eton College, "honestas et rationabiles finaliter recedendi a Collegio;" succession on such terms deserves every encouragement, inasmuch as the retiring persons themselves become meliorated in their situation, whilst, by their resignation, they benefit all below them.

At King's College such vacancies arise from the acceptance of Ecclesiastical Preferment and election to a Fellowship of Eton, (a removal to any other College being strictly forbidden.) At Eton, chiefly from the acceptance of Ecclesiastical Preferment: in proportion, therefore, as these sources are kept open, the two Societies will be benefited, and it is equally evident that the interests and rights of the two Colleges are so intimately blended,

that no material alteration can take place in either, without seriously affecting them both.

It being an undoubted fact, that the Fellows of Eton College do now take and hold Ecclesiastical Preferment; the Provost and Fellows of King's College conceive that such a custom is contrary to the Statutes of Eton College, and highly injurious to the other Members of the two Foundations; as they trust they shall be enabled to prove satisfactorily to your Lordship, by the subsequent statement.

The Statutes of Eton College give leave to the Provost to hold Ecclesiastical Preferment. "Item quod dictus Præpositus "de Etonâ quicunque perpetuis futuris temporibus, pro bono "et honore dicti Collegii et suo, habere valeat, simul cum "Præpositurâ Collegii prædicti, quæcunque beneficia aut "Officia Spiritualia, unum vel plura, dummodo talia non "fuerint, quæ juramento aliquo residentiam continuè exigant "corporalem in eisdem."

The Fellows on the contrary are prohibited from holding Benefices. Vide Eton College Statutes, chap. 25, entitled, Propter quas causas rationabiles et honestas Presbyteri Socii perpetui debeant finaliter a Collegio recedere memorato.

"Si vero aliquis Sociorum hujusmodi prædictorum beneficium "Ecclesiasticum aut officium perpetuum cum curâ vel sine "curâ adeptus fuerit, per unum annum a tempore adeptionis "hujusmodi continuè computandum, in dicto nostro Collegio "eum stare permittimus et non ultrà: nisi sit tale beneficium "vel officium, in quo, vinculo Juramenti, aut ordinatione "aliquâ speciali per eum juratâ, teneatur continuè residere. "Quo casu cum statim post assecutionem Beneficii seu Officii "hujusmodi, ipso facto exclusum et privatum esse volumus "nostro Regali Collegio memorato. Volentes ac etiam ordi- "nantes quod nisi post lapsum Anni prædicti infra eundem, "ipsum beneficium effectualiter dimiserit etiamsi litigiosum "fuerit ipso facto pro non Socio habeatur. Illud autem "volumus, quod nullus prædictorum Sociorum ullo unquam "tempore aliquod acceptet beneficium ecclesiasticum cum curâ

" animarum, quod situm est infra quinque milliaria à nostro " Regali Collegio prædicto; aut Præbendam vel Beneficium " aliud sine curâ nisi Archidiaconatus fuerit, quod situm est " infra septem milliaria ab eodem sub pœna perjurii et resti- " tutionis omnium et singulorum per ipsum a nostro Collegio " prædicto acceptorum, toto tempore quo Socius fuerat in " eodem."

In like manner the Provost of King's College is permitted to hold Ecclesiastical Preferment, and the Fellows are forbidden.

King's College Statutes, Chapter 28.

Propter quas causas rationabiles et honestas Presbyteri Socii perpetui debeant finaliter a Collegio recedere memorato.

" Quemlibet insuper Socium vel Scholarem ipsius Regalis " Collegii postquam Beneficium Ecclesiasticum cum curâ vel " sine curâ adeptus fuerit, etiamsi litigiosum existat per unum " annum et non ultrà, nisi infra eundem annum Beneficium " hujusmodi absque dolo, fraude, aut ingenio ejusdem evictum " fuerit ab eodem, Socium stare permittimus in nostro Regali " Collegio memorato."

This Statute remains in force in King's College, and is so strictly acted upon, that no Fellow is permitted to retain his fellowship with the smallest Benefice requiring induction, whereas the Statute of Eton College has ceased to be observed, contrary, as it appears, to the Will and intention of the Founder.

According to the following record—December 4, 1443, at the admission of the first Provost, first Fellow, &c., it was stated by Richard Andrews, L. L. D. that Johannes Clericus should be always Vice Provost, he having quitted a Benefice in order to become a Fellow. This is of considerable weight, when it is known that the Founder reserved to himself the power of dispensation, and at this period exercised it, in several other points.

Moreover, during the lifetime of Henry the Sixth, the Statutes were revised by the Bishops of Lincoln and Winton,

and the two Provosts appointed Commissioners specially for that purpose. At this revision, the leave granted to the Provost was enlarged; certain restrictions, respecting distance, being removed. The Statute likewise respecting the Fellows was altered in the following manner.

" Item in Rubricâ Statutoque dicti Collegii, propter quas " causas rationabiles et honestas Socii perpetui finaliter debeant " a Collegio memorato recedere. Declaramus et volumus illud " Statutum quod sic incipit"—" Illud autem volumus quod " nullus Sociorum prædictorum ullo unquam tempore, &c. " usque ad finem ejusdem Statuti, nullius, de cætero, fore " roboris vel momenti."

The Commissioners therefore by repealing or cancelling this last sentence, and marking the words repealed with such precision, clearly shew their intention, that all the other parts of that Statute should remain in force.

Nothing can be more reasonable in questions concerning the interpretation of Statutes, than to enquire what was the practice in the earliest times; because what was done when the sense of the Statutes was best understood, and what the Founder permitted to be done in conformity with them, may be supposed to be their meaning.

Accordingly from the foundation of the College, to the Reign of Elizabeth, a period of 126 years, the prohibitory clause appears to have been in force: and although several Fellows, availing themselves of the year of grace, took Livings, and resigned them, before the end of that term; yet no interpretation or construction was brought forward as sanctioning a permanent tenure of a Benefice with a Fellowship; we may therefore conclude that it was the opinion of the Fellows, during those ages, that the tenure of a Fellowship with Ecclesiastical Preferment was unstatutable. For the express purpose of obtaining relief from this prohibitory clause, recourse was had to an extraordinary power, and in consequence of representation made, relief was granted (as we are informed by the Provost and Fellows of Eton) by the following Dispensation of Queen Elizabeth. (For a copy of this Dispensation, see page 3.)

Upon the authority of the above Dispensation alone, the whole plea of the Fellows of Eton College for taking and enjoying Ecclesiastical Preferment is founded; a Dispensation granted in direct opposition to the prohibition contained in the Statutes, and accepted and acted upon, though inconsistent with the true construction of their oaths, as the following extracts will clearly shew.

Eton College Stat. Chapter 61.

Finis et Conclusio omnium Statutorum.

" Porrò quanquam nostris temporibus perspeximus qualiter " plerisque in locis regulæ, institutiones, et Statuta a suis " possessoribus juxta fundatorum intentiones minimè, ut " debuerant, observantur; sperantes tamen firmiter, quod viri " literati, scientes legem divinam, habentes Deum præ oculis, " ejusque voluntatem in regulis, ordinationibus, et Statutis " observandis, lucidius præ aliis intuentes, has regulas, " ordinationes et Statuta illis contradita strictius observabunt; " confidenter hoc præsens nostrum regale Collegium juxtà " eadem regulas, et statuta, et ordinationes gubernandum " eisdem credimus committendum.—Verum quia ea, quæ in " fine dicuntur, velut arctiùs impressa, solent mentibus " hominum magis commendari: ac volentes eadem Statuta, " regulas, et ordinationes præceptis, ac jussionibus regiis " frequenter repetitis stabilire fortiùs, et firmiùs communire; " et ne, quod absit, in eisdem ordinationibus, et statutis, " sicut in aliis, jam vidimus accidere, dolus, aut fraus fiat in " futuro; hâc edictali, et in perpetuum valiturâ lege, in " omnium statutorum nostrorum fine ordinamus, et statuimus " subpœnâ anathematis, et indignationis omnipotentis Dei " arctiùs prohibentes; ne quis Sociorum presbyterorum, aut " Scholarium dicti nostri Collegii, cujuscunque status, gradus, " scientiæ, facultatis, aut officii, exstiterit, pro sua voluptate, " odio, seu aliâ causâ, vel occasione quâcunque ordinationum,

" et statutorum nostrorum quicquam sensui nostræ intentionis,
" ut præmittitur, contrarium, vel adversum, interpretatione
" excitante sinistrâ, aut quocunque verborum suadente colore,
" arte, vel ingenio, occasione datâ, procuratâ, aut etiam
" exquisitâ affirmet, construat vel defendat; aut quovis alio
" modo per se vel alium quomodocunque aliter quam nostræ
" intentionis existit construi, interpretari, seu affirmari quâ-
" cunque ex causâ procuret : si quis verò antiquo suadente
" serpente, quicquam contra præmissa, verbo, vel facto
" pertinaciter præsumpserit attentare : a dicto nostro Regali
" Collegio, si super hoc per testes idoneos convictus fuerit
" tanquam in hâc parte perjurus, sine spe regressûs, penitus
" excludatur pœnis aliis in hoc casu superius irrogatis in suo
" robore nihilominus permansuris. Volumus nihilominus quod
" non obstantibus hujusmodi nostris ordinationibus, et statutis
" factis, ut præmittitur, in posterum vel fiendis, ac aliis non
" obstantibus, quibuscunque, nobis pro tempore nostro libera
" sit facultas præsentibus nostris ordinationibus, et statutis
" addendi ipsas, et ipsa in toto, vel in parte tollendi, diminu-
" endi, mutandi, declarandi, interpretandi, corrigendi, et de
" novo alia ordinandi ; ac cum et super eisdem et contra ea
" dispensandi toto tempore vitæ nostræ tenore præsentium.
" Statuimus, ordinamus et volumus, quod nullo modo nec
" ullo tempore liceat alicui hæredum vel successorum nostro-
" rum Regum Angliæ, seu Lincolniensi Episcopo, qui pro
" tempore fuerit, seu alicui alteri Episcopo cuicunque, post-
" quam cum Deo placuerit, subtracti fuerimus ab hâc vitâ,
" nec Præposito aut Sociis nostri Collegii prædicti qui nunc
" sunt, aut erunt, Collegialiter, coiter, vel divisim, nec alteri,
" cujuscunque dignitatis, statûs, gradûs aut conditionis existat,
" aliqua alia nova Statuta, seu ordinationes, regulas, con-
" stitutiones, interpretationes, immutationes, injunctiones,
" declarationes, aut expositiones alias præsentibus nostris
" ordinationibus, et statutis per nos jam editis, in posterumve
" condendis, aut sano, et plano intellectui eorundem, repug-
" nantes vel repugnantia, derogantes vel derogantia, discor-
" dantes vel discordantia, contrarias vel contraria, diversas

" vel diversa, edere, condere aut ordinare, statuere vel dictare
" nec eis, vel alicui ipsorum liceat præmissa, vel eorum aliquod
" quocunque quæsito colore infringere, seu alicujus statuti
" tenorem, aut substantiam demere vel mutare, nec circa ea
" quomodolibet dispensare. Nec volumus quod per aliquem
" desuetudinem, consuetudinenem vel abusum, aut aliam
" occasionem quamcunque intentioni aut verbis Statutorum
" nostrorum, aut ordinationum in aliquo derogetur: Nolentes
" insuper aliquam interpretationem fieri de eisdem, aut circa
" ea, nisi juxta planum sensum, secundum intellectum, et
" expositionem grammaticalem et literalem magis, et aptius
" ad casum, seu prætensum dubium de quo quæritur, et agitur
" applaudentem."

" Inhibemus quoque, statuentes et ordinantes specialiter, et
" expressè, ac sub interminatione divini judicii interdicimus
" dicti nostri Regalis Collegii Præposito, et Præpositis, ac
" Sociis et Scholaribus ejusdem universis, et singulis præsen-
" tibus, et futuris, ac in virtute juramenti per ipsos et eorum
" quemlibet dicto Collegio præstiti admonemus, et hortamur
" ne ipsi collegialiter, cõiter, vel divisim aliquas alias ordina-
" tiones, vel Statuta, declarationes, interpretationes, mutationes,
" injunctiones, expositiones, vel glossas præsentibus nostris
" ordinationibus, et statutis, vel ipsorum sano, et plano,
" grammaticali, et literali intellectui quomodolibet adversantes
" vel adversantiâ, repugnantes vel repugnantia, derogantes
" vel derogantia, nisi per nos edenda acceptent, nec hujus-
" modi fieri procurent, aut eisdem utantur publicé, vel occultè,
" directè vel indirectè: et si contra præmissa, vel contra inten-
" tionem nostram in præmissis, vel eorum aliquo per aliquem
" vel aliquos, quod absit, aliquid vel aliqua contingat ordinari,
" fieri, aut dictari, vel dispositionem aliquam scienter vel ignor-
" anter concedi, declaramus dictos, Præpositum et Præpositos,
" Magistrum Informatorem, Ostiarium, Socios, et Scholares,
" ac Clericos dicti nostri Collegii, quibus omnibus et singulis
" in eâ parte omnem, et omnimodam adiminus potestatem ad
" ipsa observanda non teneri quomodolibet, vel astringi, sed ea
" vacuamus omnino, et carere volumus omni rebore firmitatis

" aliis pœnis in hoc casu inflictis superiùs in suâ firmitate nihi-
" lominus permansuris."

Every Member of both Colleges not only swears to obey all and singular the Statutes and Ordinances; but the following oath is taken, or ought to be taken, by every boy at Eton, at sixteen years of age; is actually taken again as Scholar of King's; again, as Fellow of King's; and is, or ought to be, again taken as Fellow of Eton, and lastly as Provost. (Vide Eton College Stat. chap. 9.)

" Item quod non impetrabo Dispensationem aliquam contra
" Juramenta mea prædicta, et contra ordinationes et Sta-
" tuta de quibus præmittitur aut ipsorum aliquod, nec Dis-
" pensationem hujusmodi per me, alium, vel alios, publicè vel
" occultè impetrari aut fieri procurabo, directè vel indirectè,
" et si forsan aliquam Dispensationem hujusmodi impetrari,
" vel gratis offerri aut concedi contigerit; cujuscunque fuerit
" auctoritate, seu si generaliter vel specialiter aut aliàs sub-
" quâcunque formâ verborum concessâ, ipsâ non utar, nec eidem
" consentiam quovismodo; sic me Deus adjuvet et hæc sancta
" Dei Evangelia."

From the above extracts, it must be evident that the Founder inserted these prohibitory clauses under a full conviction, that he was legally empowered to prevent his Successors from dispensing with the Statutes; and that he had thrown in the way of any such attempt, an obstacle, not to be removed by any legal power vested in the Crown; and such will be found to be the case.

The Charter of Foundation was sanctioned by an Act of Parliament at Westminster, May 4, 1444, and the Statutes issued under the Great Seal. This Charter and the Statutes were confirmed under the Act of Resumption of Edward the Fourth, confirming and establishing all grants, rights and privileges to Colleges made by Henry the Sixth (King in deed and not in right, as it is expressed in the Act.) Upon legal points we are aware that we ought to hazard an opinion with great diffidence; but we are well advised, that in the case of a Royal Foundation, when the Crown has given Statutes and appointed a Visitor, the

succeeding Kings or Queens have no power of dispensing with those Statutes, unless there be some clause therein, specially reserving such power to the Founder's Successors.

Queen Elizabeth, who at her will and pleasure granted a Dispensation, contrary to the express orders of the Founder, to Eton College, had an Act of Parliament (1. Eliz. chap. 22.) to enable her to alter and settle the Statutes of the Colleges, &c. founded by her Father, Henry VIII.; her Brother, Edward VI.; and her Sister, Queen Mary. If then an Act of Parliament was necessary in that case, we conceive that we are right in asserting, that nothing short of an Act of Parliament could give a legal power to alter the Statutes of Eton College.

In respect to the Fellows, as each Member, at his admission, swears to observe the Statutes; which Statutes forbid his accepting or pleading a Dispensation; and likewise takes the oath above recited, drawn up with extraordinary care and caution against every mode of evasion, for the express purpose of preventing the suing for, or accepting of a Dispensation, in any shape, or under any authority, we cannot find any possible plea or excuse for a Member, who has voluntarily taken this oath; but that he remain so completely bound by it as to be rendered utterly incapable of accepting any subsequent Dispensation whatsoever.

The truth of this opinion the following case will strongly tend to confirm.

Magdalen College, Oxford, was founded by William Waynflete, Provost of Eton, during the life of Henry VI., and its Statutes contain the same oath against Dispensation. When therefore James II. sent down a Mandate to the Fellows to elect a certain person as their President, they represented to the King, that such proceedings were contrary to their Statutes, which they were sworn to obey. Upon this the King offered a Dispensation, to relieve them from their oath; they replied, that having taken an oath against Dispensation (verbatim the same as that of Eton College) they could not accept of one;

and in this, their conscientious refusal, they persisted, although urged to its acceptance by the King in person. (Vide State Trials, Vol. 4. fol.)

It may possibly be asked, if the whole measure be illegal and indefensible, why the then existing Members of our College did not resist this invasion of their rights; whereas, by its being acquiesced in to this late period, a validity has been obtained by long usage, and custom. In respect to the reasons for acquiescence, we cannot pretend to give a certain account; but we are borne out by History, in asserting, that no persons dared oppose the prerogative of Queen Elizabeth, however unconstitutionally exercised; and particularly Colleges, who had fresh in remembrance their narrow escape from total abolition by her Father.

In our own College we have many instances of the unstatutable appointment of Fellows who had never been educated at Eton, to which no resistance was made. No argument therefore can be drawn from this acquiescence: neither will the plea of long usage, which on many other occasions, gives a legal sanction, avail in this case. The Statutes to which the Fellows of Eton have sworn obedience having thus guarded against it:—
"Volumus insuper quod nunquam de cætero per aliquam "desuetudinem, consuetudinem, vel abusum, aut aliam "occasionem quamcunque, intentione aut verbis Statutorum "nostrorum et ordinationum in aliquo derogetur."

In conformity to this, Bishop Wickham, in his Interpretation of the 46th Stat. entered in our Book, thus writes:—"So "I require this to be put in practice hereafter; however by "long custom it has been otherwise; for that your Founder "would have nothing derogated from the Statutes, "per consuetudinem vel desuetudinem."

We likewise furnish a memorable instance against long usage by the recovery of the Statutable Election of our Provost: which appointment had been seized upon and given away by the Crown from the reign of Edward IV. until the Revolution, at which time a successful resistance was made; in which opposition the College was encouraged by the Visitor, who in a

Letter to the Vice Provost denies the power of the Crown to interfere with the Statutes. Length of time therefore can give no permanent authority against the Statutes. The prerogative in the appointment of the Provostship was exercised from the reign of Edward IV. to that of William and Mary; the Dispensation at Eton commenced in the eighth year of Elizabeth, and still exists. The duration of each will be found nearly equal, and as in the one case it was of no avail, so against the Visitor, it can be of none in the other.

Denying, as we do, the validity of the Dispensation, in toto, it may appear useless to make any remarks upon the Queen's Letter; yet, unwilling to pass by any observations, which bear upon the subject in question, we beg leave to state, that it appears extraordinary, that the Statute or Articles, forbidding the holding of Livings, alone are dispensed with, and not the smallest notice taken of the important oath, against accepting or suing for a Dispensation: as this oath formed an insurmountable obstacle to the intended grant of the Queen, it was to have been expected that her Majesty would have granted absolution (had such a power been vested in her) to those, who had taken the oath, and enjoined the leaving it out for the future. No notice having been taken of it, gives room for strongly suspecting that the Dispensation was "*ignoranter concessa:*" and when it is considered, that those persons making suit "per se, alium, vel alios," acted in direct violation of their oath; they were reduced to the awkward dilemma, either of confessing their breach of oath, or keeping it from her Majesty's knowledge.

The Dispensation is likewise granted to remain in force until the Queen saw a reasonable cause for revoking it. It was not therefore to be considered as a grant in perpetuity; but to cease on certain events taking place. The deficiency of income was the plea on which the suite was made; if then this plea no longer exists, the reasonable cause for revocation is apparent. The income of a Fellow at Eton was at that time extremely small: if reports be true it is now very considerable, and fully sufficient for the support of each Fellow, as intended by the

Founder. For although we do not entertain the smallest idea of calling in question the advantage taken by the Fellows of Eton, at the Reformation, in regard to marrying; yet it must be evident that the Founder intended that no Member of either of his Colleges should be married; their change of condition gives them no claim to a larger share of the public property, or to the sacrifice of the rights of 140 individuals (viz. 70 Boys at Eton, and 70 Fellows and Scholars at King's) to the interests of seven persons.

We proceed to state the injurious consequences of the Dispensation to the Fellows of King's and Scholars of Eton. Under this the Fellows of Eton hold, not only their own Livings, but also the Livings of King's College, whereby a Fellow of King's is prevented from succeeding to a Living, and a Boy from Eton to King's, as would be the case, were the Statute in force. And within memory five Fellows of Eton have held King's College Livings, and of these, three at one time, out of the small number of 21, belonging to the latter College. Moreover as the Livings of Eton College are very numerous (37) and valuable, vacancies from Benefices must frequently happen, and as Fellows of King's stand first in point of eligibility for Fellowships, their chance of being chosen must necessarily be rendered more probable by such frequencies of election; an event equally advantageous to both Colleges in point of succession; and even without setting up the claim (which we might, as believing it to be true) that the Founder intended that our Fellows should be chosen in preference to all others; if a beneficed person cannot statutably be elected, the Candidates for Fellowships, on these terms, will be so few in number, that the choice will be confined almost entirely to King's College.

We are aware that the Statutes of Eton College are silent as to the eligibility of a person already beneficed; but we conceive that we are borne out in this our opinion by the instance of John Clerc above mentioned, likewise by the finding no mention made of any Fellows being elected with a Benefice, previous to the Dispensation; although several are stated, after

having become Fellows, to have taken a Living, and resigned it, before the end of the year; and by the doubt which may arise on the construction of the prohibitory clause, whether a person, who has enjoyed a Living above a year, has not exceeded the time allowed by the Statute, and so become ineligible without previous resignation of his Benefice. But even should a favourable construction be put on the Statute, and the year of grace allowed; as at least every Fellow must resign within a certain time, as set forth in the *preamble* to the Dispensation (and therefore allowed to be the true meaning of the Statute by the Fellows of that time, as well as by the present Fellows, they having alleged the Dispensation as a full defence for their taking and holding a Living) the difference will be so trifling, as not to appear an object worth a dispute.

If then the welfare of both Colleges be promoted by quick succession, the long usage of this Dispensation is so far from recommending its continuance; that it must appear strongly on the contrary side, when the number of Boys superannuated, in consequence of it, are considered, and that the succession of our Fellows to Livings (necessarily slow from the small number in our possession) is rendered still slower by this Act; so that few have the offer of a Living early in life, but are compelled to go out on Curacies, or pass the greater part of their time in College.

A compensation might have easily been found, and the injurious consequences to the succession in a great measure obviated, had the Fellows of Eton, after experiencing such an indulgence from the Queen, shewn the same kindness to the Fellows of King's, by giving the remainder of their Livings to them in seniority as they fell vacant, themselves being first provided with a Living, as set forth in the Dispensation: and although the Statutes are silent upon this head, yet from the intimate connection between the two Colleges, and the mutual assistance and acts of reciprocal kindness enjoined by the Statutes, it may fairly be inferred, that such a disposal of their Benefices would have been most agreeable to the intention of the Founder.

Such was the opinion of Archbishop Laud, upon the

Appeal from King's against Eton College, as expressed in the following terms:

"In giving their Benefices, or any other shares of profit, "in their bestowing, I see great equity all along the Statutes, "of presenting King's College men next unto themselves. "But whether the Statutes be so punctual as to command this, "or do only leave it as a thing little doubted by the Founder; "considering what tie he hath made in all things between the "Colleges, I am as yet in some doubt; but sure it will be very "fit, either to command it, or very seriously to advise it, "to the College of Eton; and I cannot see any good cause, "and loth I am to conjecture any bad, why these two "Colleges, so nearly joined by the Founder's intentions and "Statutes, should make themselves such strangers one to "the other, as they do."

Whatever might have been the representations by Archbishop Laud to Eton College upon this point, they are unknown to us, but they certainly produced no effect; for granting that many Livings have been given to actual Fellows, and those who have been at King's, yet these have been given by Fellows of Eton, as their options, on the score of private friendship or relationship, as in their arrangement for the disposal of their Livings, not the smallest notice has been taken of King's College.

Were the evils above stated temporary, and the acts of individuals, which ceased with them, they would not be worth our serious notice, but the case is totally different: this departure from the Statutes is a regular system, which must last as long as the College exists, unless a remedy be applied.

If then the above statement be true, as we trust it will be found tobe in every particular, we conceive ourselves warranted in drawing the following conclusions.

1st. That in the case of a Royal Foundation, where the Crown has given Statutes and appointed a Visitor, a succeeding King or Queen has no more power of dispensing with any of the Statutes, than the Heir in the case of a private Foundation; unless there be some clause in the Statutes, specially reserving such a power to the successor. It does not appear that there is

any such clause or reservation in the Statutes of Eton College, but on the contrary there is an express prohibition against any succeeding Kings or other persons granting a Dispensation.

2d. That the Dispensation procured from Queen Elizabeth does not even affect to dispense with the oath which the Fellows of Eton College are required to take on their admission. They are therefore bound to take it, and if they do, and avail themselves of the Dispensation, they violate their oath; if they do not take it, in the form prescribed, they violate their Statutes.

3d. That by taking and holding of Benefices contrary to the Statutes, a system has been introduced, highly injurious to the succession, in the two Foundations of Henry VI.

4th. That a beneficed Candidate elect ought to resign his Benefice before admission; and that an actual Fellow taking Ecclesiastical Preferment cannot hold it beyond the time specified in the Statutes, without forfeiture of his Fellowship.

Confiding therefore in the justice of our cause, we have thought proper to have recourse to the statuable mode of redress, by appealing to your Lordship, as the common Visiter, Guardian of the rights and privileges, and Judicial Interpreter of the Statutes of the two Colleges: humbly praying, that should our case, upon examination, prove true, and our complaint well-founded; your Lordship will be pleased to apply such remedy, as in your wisdom and judgement, may appear most apt and convenient.

We beg leave to assure your Lordship, that in making this our Appeal, we are actuated by no personal motives of ill-will towards the present existing Fellows of Eton; whom we believe to have been induced by the example of their predecessors, to have thus acted; neither are we allured by the hopes of immediate advantages, as the greater part of the existing Members cannot expect to derive the least benefit from your Lordship's decision, however favourable it may be; but we act under a full conviction, that it is our duty to endeavour to recover these rights, which have been taken from King's College by the Dispensation of Queen Elizabeth; so that our Successors

may enjoy unimpaired, all the advantages and benefits which our Gracious Founder was pleased to confer, in common, on his two Royal Foundations.

Answer of the Provost and Fellows of Eton College to the Appeal of the Provost and Fellows of King's College.

To the Right Rev. Father in God, GEORGE, Lord Bishop of Lincoln, Visitor of King's College, Cambridge, and of Eton College.

MAY IT PLEASE YOUR LORDSHIP,

WE, the Provost, and College of Eton, beg leave respectfully to submit to your Lordship's consideration the following Answer to the Appeal and complaint lately preferred to your Lordship in the name of the Provost, Fellows, and Scholars of King's College, Cambridge.

The complaint is, that the Fellows of Eton College do now take and hold Ecclesiastical Preferment together with their Fellowships. This is averred to be an innovation, contrary to the Statutes of that College, injurious in its effect to the other Members of the two Foundations, and equally illegal whether preferment be retained by a beneficed Candidate after his admission to a Fellowship, or accepted by an actual Fellow, if holden beyond the time specified in the Statutes, and it is assumed that in both these cases the Fellows of Eton College rely only on what is called the Dispensation of Queen Elizabeth, dated the 11th of June, 1566, of which the authority is wholly denied.

That the Fellows of Eton College do take and hold Ecclesiastical Preferment is a fact not disputed. But before we enter

upon our answer to this complaint, we cannot refrain from imploring your Lordship's attention to the consequences that may follow from your Lordship's sanction of it, and which are of such a nature that the complainants themselves have not ventured to point them out, nor to ask of your Lordship any specific redress for the supposed grievance, to which they have called your attention. Every one of the present Fellows of Eton is by this complaint assumed to be absolutely disqualified from holding his Fellowship, and this not by reason of any misconduct on his part, nor by reason of any innovation introduced in modern times, or with a view to his personal benefit or convenience; but only because he has conformed himself to a practice, which those, who now complain of it, trace back for two hundred and fifty years. We humbly but confidently trust that a complaint attended by such consequences will not receive your Lordship's sanction, unless both the illegality and inexperience of the practice shall be proved by the complainants and placed beyond all doubt. We trust, on the other hand, that we shall be able to satisfy your Lordship that the practice is well warranted in law, and conducive to the general interest and welfare of the community of the two Societies.

A consideration of these consequences, as well as of other matters connected with this Appeal, induces us to doubt (and we trust your Lordship will allow us to express that doubt to you) whether this Appeal be in reality, as it professes to be, a representation of the sentiments of the Members of King's College in general: we believe it to be the act of a few individuals only, and this belief has had a strong influence upon the manner of our answer; for we are earnestly desirous to preserve that peace and harmony, which, according to our Royal Founder's will, and express injunction, ought to subsist between the two Colleges; and we trust we shall in the course of this our reply, satisfactorily prove, that at no period since the foundation have the interests of King's College been more respected at Eton than during the last 40 years.

In the investigation of the present question, if your Lordship shall now think it so far to concern the interests of King's

College, or the Members of either foundation, as to require your Visitatorial Interposition, we agree that the practice of earlier times will be of high importance.

From that practice, as stated by the complainants, it is attempted to be inferred that from the foundation of Eton College "till the reign of Elizabeth, a period of 100 years," the clause in the 25th Statute was received, and acted upon according to the construction now assumed by the complainants; and though several Fellows, as it is alledged, availing themselves of the year of grace, took Livings and resigned them before the end of that term, yet that it was the opinion of the Fellows during those ages, that the tenure of a Fellowship with Ecclesiastical Preferment was unstatutable, and that for the express purpose of obtaining relief from the effect of the statutable prohibition, the Dispensation of Queen Elizabeth was applied for and obtained.

These positions it may be proper to examine, and more especially the earlier usage.

For we by no means admit that the practice of holding Ecclesiastical Preferment together with a Fellowship of Eton College is to be ascribed to no earlier date than the Dispensation of Queen Elizabeth, or that this Dispensation is the authority upon which it depends.

On the part of the complainants it is observed, and much relied upon, that at the admission of the first Provost, first Fellow, &c., in 1443, it was stated by Richard Andrews, L. L. D. that I. Clerc should be always Vice Provost, he having quitted a benefice in order to become a Fellow, inasmuch as the Founder reserved to himself the power of Dispensation, and at this time exercised it in several other points.

He also exercised it in this, and in the following terms: "Gratiosè Dispensamus cum eodem modo vice præposito ejus-"dem, quod ipse, quoad vixerit, semper, et continue sit, dum "in eodem Collegio ut socius steterit, vice præpositus ejusdem, "statuto nostro in contrarium edito non obstante," for the office of Vice Provost is by statute an annual office, and elective.

That a person, who by the King's Dispensation was to be

always Vice Provost, in a College so lately founded by the King, and immediately, as must be allowed, under the eye of his Royal Patron, should have readily relinquished a benefice, concerning which, or its situation, we have no particular, for this appointment, with the further expectations, which it might reasonably excite, is not unfair to suppose, and we find in fact he was elected Provost, July 31, 1447.

It is however inferred by the appellants from this solitary instance, that every Clerk in possession of a Benefice at the time of his admission as Fellow, was called upon to resign it, as being no longer tenable with his Fellowship.

The 23d Statute, to which we shall have occasion to refer, will induce a very opposite conclusion.

What preferment the earlier Fellows may have had prior to their admissions would not be likely to appear in any muniment of the College, it being matter of difficulty to ascertain even their succession, because neither in the letter written to the Fellow elect, nor in the admission, except in some very few instances, the name of the person who made the vacancy is inserted.

The same difficulty generally applies to the succession to Livings in the gift of the College, as in many cases the words used in the presentation were "jam vacantem" instead of "loco A. B."

The earlier rolls of the College also, at least many of them, were probably carried to Windsor when Dr. Westbury, the then Provost, was compelled to surrender to Dean Courtney sundry effects, &c. of the College; and in a Letter of Dr. Philip Fell to Dr. Cradock, Feb. 1681, who were both at that date Fellows of Eton College, he remarks, "our registers have "been so ill kept, are so short, and broken in time, so blotted, "and razed, &c." to which we might add the effects of mould, and damp, and we fear great carelessness, have contributed to make research still more difficult.

Hence what may have been the first instance of Ecclesiastical preferment holden together with a Fellowship, we have been unable to discover, but we may state, that as early as 145[illegible], within 13 years from the foundation, Richard Hopton was made Fellow.

He was V. Provost in the 8th of Edward IV., 1468. He was not V. Provost in the 9th and 10th, but was again V. Provost in the 17th, 1477, which appears from the record of Provost Bozt's election.—(See Register Book, E. C. P. 108.)

He was also V. Provost in the 18th year of the same reign, and again in the 2d of Richard III.

He was not V. Provost 1st Hen. VII. 1486, nor in any subsequent year, but died Fellow 1496—7, as appears by his epitaph in Eton Chapel.

This Richard Hopton was presented to Pyddlehinton by the College in 1462, (Reg. p. 53,) resigned in 1471; was presented to St. Alban's, Wood-street, 1477, (Reg. p. 62,) and resigned it in 1487, (p. 76.)

William Boswell also, who was made Fellow in 1547, was presented by the College to St. Alban's, Wood-street, in 1548, which he held till the year 1558, and no new Fellow was elected at Eton between the date of his presentation and the year 1552.

These are severally instances in the earliest times of the practice of holding Ecclesiastical preferment by an actual Fellow, together with a Fellowship, and to which presentation was made after admission.

The livings, Pyddlehinton and St. Alban's, Wood-street, being both in the gift of Eton College.

Both instances also occur prior to Queen Elizabeth's letter, and to the æra of reformation.

It cannot be denied, that from 1566, the date of her Majesty's letter, the usage which now prevails has been consistent and uniform, and if from the earliest instances no complaint, so far as appears, has been made by the Provost and Fellows of King's College, until the year 1813, it may be fairly inferred, that in their opinion it has not been before thought to be unstatutable, prejudicial, or illegal, in its origin or continuance.

We might add, that on the contrary in the reign of King Charles the First, when they did expressly petition Archbishop Laud, in his metropolitan visitation, that his Grace, as well for the future conservation of their privileges, as also for the

present, founded upon the allegation of their having been given to understand, that his Majesty, out of his care to advance the livelihood of a poor Clergyman, had directed his Royal Letters to the Provost and Fellows of his College of Eton, thereby requiring them to choose into the next Fellowship the Vicar of Windsor, and so successively, would vouchsafe amongst their other requests, to intercede with his Majesty in their behalf, that the Vicar of Windsor might thereafter be chosen out of his Majesty's College at Cambridge, they failed not to add, "By which means his Majesty's Royal pleasure, and their Blessed Founder's, shall be fulfilled to the further benefit of his Royal Foundation."

They afterwards presented a petition to the same King, complaining that they had received much injury from their sister College in many things, but most apparently in their choice of Fellows there, and praying that his Majesty would recommend the examination and exposition of the statutes, and the final determination of all other causes, which concerned the peace and amity of both societies, to the same Archbishop.—This was followed up by delivering to the Archbishop a paper, wherein they complained of the reduction of the number of Fellows at Eton College, and asserted a claim to be preferred in the choice of Fellows there, and to be considered by the Provost and Fellows of Eton in the donation of benefices next to themselves, and in this paper they expressly adverted to the Founder's charge, in fine et conclusione Statutorum, "quod non per aliquam desuetudinem, consuetudinem, vel abusum vel aliam occasionem quamcunque intentioni aut verbis ipsorum Statutorum, aut ordinationum, in aliquo derogetur." Now it is scarcely possible, that if the practice at present complained of had been then thought illegal, it should not have formed a prominent part of the grievances then asserted. The same observation will equally apply to their proceedings in the two next reigns; the last of which led to a reference and determination by Lord Chancellor Jefferys, by the King's command, and his Majesty's confirmation thereof by his Royal authority.

Upon the force, therefore, of an usage which we consider to have prevailed from the earliest times, we hope that we are justified in relying. We also take leave to submit, that not a single clause in the 9th statute prohibits us from electing into a vacant Fellowship a person already beneficed, and that there is no oath taken by a Fellow at his admission, inconsistent with his possession of a Benefice at that time. The Fellow is not required, as in the correspondent statute of King's College, to swear that he is not in possession of a patrimony, &c. &c. and accordingly we find, that Edward Waddington, afterwards Bishop of Chichester, who resigned his Fellowship of King's College upon coming to possession of an estate devised to him by his grandfather, was sometime after elected Fellow of Eton, still retaining his estate, and being also Rector of All Hallows: and he held his Fellowship of Eton, together with his Bishoprick, for seven years, and until his death.

The 23d Statute* nevertheless, appears to us to contemplate the very circumstance, that a Fellow might possess an Ecclesiastical Benefice; and here again is an evident distinction between the correspondent Statute of King's College, wherein the words "Ecclesiasticum Beneficium" are omitted, and militating against that identity of intent in the mind of the Founder in this particular, for which the complainants so anxiously contend.—The words "adeptus fuerit," in the 25th Statute, we consider evidently to refer to what shall happen after the Fellow is admitted, and not to an anterior period, which we think will still more clearly appear on reference to the 38th Statute of King's College. The Scholar at his admission swears, "quod non habeo aliquod de quo mihi constet undè possum expendere annuatim quinque marcas Sterlingorum." The Fellow of King's, at his admission to his Fellowship, takes no oath with respect to his annual means of spending the same sum or more; but in the 31st Statute of King's College, among the honestæ causæ for resigning his

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* See Extract at the end of this Answer.

Fellowship, he is to resign "quod patrimonium hæreditatem feodumve seculare perpetuum aut pensionem annuam perpetuam ad valorem communibus annis centum solidorum habuerit, et fuerit assecutus." The accession of property therefore, we conceive, must take place after he is admitted Scholar, when he could only have two-thirds of the sum, the possession of which would oblige him to resign his Fellowship; and that the words cannot but refer to a period subsequent to his first admission to a Scholar, besides that "assecutus fuerit" in the 25th Statute of Eton College, and in the 38th Statute of King's College, are in the same tense with adeptus fuerit; and from hence we conclude, that the words "Beneficium Ecclesiasticum, vel officium perpetuum cum curâ, vel sine curâ adeptus fuerit," do not apply to a Benefice possessed before admission to a Fellowship.

In respect to the letter of Queen Elizabeth, the complainants, not contented with denying its validity *in toto*, have from the circumstance of no special notice being taken therein of the oath against suing for or accepting dispensations, ventured to infer, that the same was "ignoranter concessa;" and further to remark, that those persons who made suit "per se vel alios," were under the necessity, either of confessing their breach of oath, or of keeping it from her Majesty's knowledge.

To such an insinuation we reply, that the Queen herself was of a character not likely to have been imposed upon, or to have dispensed her Royal favour, either ignorantly, or without due advisement and consideration.—In her letter to Archbishop Parker, Aug. 22, in the third year of her reign, she says, "The rest of the order of that College (Eton) we require you "to see reduced to the best, for the honour of Almighty God, "and increase of learning, and of your doing we require "advisement."—*Strype's Life of Archbishop Parker, App. p.* 29.

If, as it is further believed, and is highly probable, Sir Thomas Smith, who had been Provost of Eton from 1547 to 1551, procured this measure for the College, and of his own good will, the suppression of any necessary information by a

person of his high character, and so well acquainted with the whole of the Statutes, should, in justice to his memory not hastily be presumed. The very terms with which the Royal Letter concludes, seem also to preclude the necessity of a more special allusion to the said oath, or any other particular. The Letter ends thus:—"Wherefore we will and require you the "Provost, to permit and suffer the Fellows there, according to "this our pleasure and meaning, to enjoy the commodity and "benefit thereof, notwithstanding any article within any "Statute of the said House, and for that respect to cause this "our Letter to be entered in the end to the rest of the Statutes, "to be continued and observed until we shall have reasonable "cause to revoke the same," &c.

And it is scarcely to be supposed, that such a person as Sir Thomas Smith would have promoted a measure of so much importance, without due attention to its legal validity.

It seems very extraordinary that the authority of the Royal interposition, in matters relating to the Fellowships of Eton College, should be called in question by the Provost, Fellows, and Scholars of King's College, who, on several occasions, invoked and obtained the Royal interposition on their own behalf. The proceedings which took place in the reign of King Charles the First have been already adverted to. The order of Archbishop Laud, directing that five out of seven Fellows of Eton College should be chosen from persons who were, or had been Fellows of King's, was confirmed by that Sovereign. This was, on the application of King's College, confirmed by King Charles the Second by Letters Patent; and again by King James the Second in the same form.—These orders have been entered among the records of Eton College, and have been considered by the Members of that Society, to have the force of a Statutable provision, and have been obeyed accordingly. On these occasions, the Provost and Fellows of King's College speak of the reigning Sovereign as their gracious and living Founder. And in the last of them they speak of the letters patent of King Charles the Second, in the following terms: "We are sufficiently advised, that these letters are

" good in matter and form. The best Counsel were advised " with in drawing them up; they are grounded upon a " determination of the proper Visitor of Eton, and unanswer- " able arguments from the Statutes of the Founder, and both " granted and re-confirmed upon mature deliberation; so that " the circumstances of our Letters Patent are such, that " nothing can be alledged against them, which would not " conclude as strongly against all Letters Patent whatever."

If, however, it should be conceded to the complainants, that this usage is not warranted by a due interpretation of the existing Statutes of the Founder, they will not by such concession have established the illegality of the usage; on the contrary, this very concession, relating as it does to an usage of so many years, naturally leads the mind to seek for some legitimate authority to which the usage may be referred: for some strong and sufficient foundation on which it may be supported. The duration of the usage is in part admitted, and of its expediency and utility we shall offer our remarks to your Lordship hereafter. That there has at all times existed a body of persons, not less interested in opposing it than the present complainants, cannot be denied by them, because, if the former Provost and Fellows of King's College were not interested in the subject, neither can the present be so, who have only succeeded to them in place and right: and if the complainants are not interested in the subject of their complaint, they have no right to trouble your Lordship with it;—and whatever might be urged in some instances, as to the neglect or inattention of bodies of this description, the several applications made to the Crown and to Archbishop Laud, on the part of King's College, in the reigns of Charles and James, abundantly prove that they were sufficiently awake to all that regarded themselves at Eton.

There is, therefore, every thing concurring in this case, which the law requires to found the presumption of a competent and legitimate authority to a long and uninterrupted usage. In the courts of common law, the period of 20 years is deemed a sufficient ground for the presumption of a grant in ordinary

cases. In some instances a conveyance has been presumed, even within a much shorter period. And this is not the doctrine of modern times, nor confined to questions arising between subject and subject.

So long ago as the reign of King James the First, (Beadle *v.* Beard and others, 12 *Coke*, *p.* 5.) a grant of an advowson was presumed to have been made by the Crown: we beg leave to give the judgement to your Lordship, in the words of the very learned Reporter:—

" But it was resolved by the Lord Ellsmore, Lord Chan-
" cellor, with the principal Judges, and upon consideration of
" precedents, that the Plaintiff shall enjoy the said Rectory.—
" For although, that by any thing which can now be shewn,
" the impropriation is defective, for by nothing which now
" appears, the issue in tail had any thing in the advowson at
" the time of his grant to the said Prior, for that the advowson
" did not pass by the grant of the King, by these words, (cum
" pertinentibus); yet it shall be now intended, in respect of
" the ancient and continual possession, that there was a lawful
" grant of the King to the said Humfry, who granted in fee,
" so that he might lawfully grant it to the said Priory, (omnia
" presumuntur solemniter esse acta), and all shall be presumed
" to be done, which shall make the ancient impropriation
" good. For tempus est edax rerum, and Records and Letters
" Patent and other writings, either consume, or are lost or
" embezzled, and God forbid, that the ancient grants and acts
" should be drawn in question, although that they cannot be
" shewn, which at first were necessary to the perfection of the
" thing; and if the impropriation had been drawn in question
" in the life-time of any of the parties to it, they might have
" shewn the truth of the matter. But after the death of all
" the parties, and after so many successions of ages, in all
" which, the said Church was esteemed and allowed to be right-
" fully impropriated, if any objection or exception shall now
" prevail, the ancient and long possession of the owners of the
" said Rectory should hurt them. For if these objections or
" exceptions had been made in the lives of the parties, without

" any question they had been answered: or otherwise in so " many successions of ages it would have been impeached or " impugned."

Your Lordship will have remarked that in this judgement Records and Letters Patent are mentioned, as well as other writings; and the doctrine thus laid down has been recognized and acted upon in subsequent cases. We shall trouble your Lordship with the citation of some of them. In the case of the Mayor, &c. of Hull against Horner, Cowper's Rep. 102. it was resolved by the Court of King's Bench, that a royal grant of Port Duties (which must have been by matter of record, for all the King's grants are matters of record) might, and ought to be presumed in support of a long enjoyment of them. Lord Mansfield, in delivering his judgement on that occasion, quoted the case of Lord Purbeck, in which the House of Lords presumed the grant of a Peerage by Letters Patent in favour of an enjoyment of that dignity, and he afterwards adds, " I have " myself taken it to be established in point of law that though " the record be not produced, nor any proof adduced of its " being lost, yet under circumstances it may be left to the " consideration of a jury, or of a court of equity, if the case " comes properly before them, whether there is not a sufficient " ground to presume a charter." It will not, we conceive, be disputed that your Lordship, as Visitor, is entitled to exercise the same discretion as hath been exercised in the courts of law, in a court of equity, and in the House of Lords. In a very recent case, Roe *v.* Ireland, 11 East, 280, it was decided by the Court of King's Bench, that enfranchisement of a copyhold by the Crown (which could only have been by Letters Patent, that is by matter of record) ought to be presumed in favour of an enjoyment commencing no earlier than the year 1636; and upon that occasion the learned and noble Lord who now presides in that Court said, " I would presume any thing " that is capable of being presumed, in order to support an en- " joyment for so long a period; as Lord Kenyon once said on " a similar occasion, that he would not only presume one, but " one hundred grants, if necessary, to support such a long en-

" joyment." Is then the privilege, whereof it is now attempted to strip the Fellows of Eton, less worthy of every intendment requisite to its support than the use of a way or a window light, the patronage of a particular church, a toll for the landing of goods, or the exchange of a tenure of a few acres of land from copyhold to freehold? or is there any reason why the grant of the subject or of the Crown should be presumed in the cases cited, and yet an alteration of the Statutes by the Founder himself, or by an Act of the Legislature, should not be presumed in favour of the case before your Lordship? An Act of Parliament, though greater in authority, is not of higher rank than a charter of the Crown; both are considered in law as Records; proper offices are assigned for the enrolment and safe custody of Letters Patent, and proper officers appointed to watch and preserve them, and the Record of an Act of Parliament, especially if it be of a private nature, is just as much exposed to the dangers of time, accident, and inattention, as a charter of the Crown. Indeed in a case (Rex v. Bishop of Ely, 1. Sir William Blackstone's Rep. 55.) relating actually to some Statutes of a College, Mr. Justice Probyn declared " that if it were necessary to pre-
" sume an Act of Parliament to repeal them, he would presume
" it." Other Judges in the courts have incidentally expressed themselves to the same effect, and we apprehend we may assert without danger of contradiction, that whatever be the nature of the authority, or instrument necessary to the legality of a long enjoyment, such authority or instrument shall be presumed to have once existed, although it can no longer be found, and although there be no other evidence of its existence except the particular enjoyment or usage, to the validity whereof it is essential. Stale demands are always discountenanced, and almost always repudiated. It is well known that our Royal Founder, after having established a body of Statutes for the Government of his College, with which it must be presumed he was well satisfied at the time of their promulgation, discovered that some things required alteration and amendment, and gave a special authority to two of the Reverend Prelates of his time to correct and reform his ordinances. Is it unreasonable to presume that the

same mind, which perceived and applied a remedy in his own time, might anticipate the necessity of further alterations in succeeding times, and might revoke the prohibitory clause, upon which the complainants so much rely, and in lieu thereof give a general power to his successors in the Throne to vary his enactments, and introduce from time to time such regulations as might be found conducive to the welfare of the Society he had established? On the contrary, is it not much more reasonable to presume that such an authority was given, either by some Statute of the Founder himself, or by some Act of the Legislature of the Realm, than to presume that so wise and politic a Princess attempted to introduce an innovation, which she had no power to effect; and that the grave and learned persons, who promoted and accepted, and acted upon this change, were all ignorant of the law, and regardless of the solemn obligation of the oath prescribed by our Founder?

The Provost and Fellows of King's College have, on the several occasions before noticed, invoked the Royal interposition i their own behalf. Had the Sovereigns to whom they applied, any authority that did not belong to their predecessor? If a due interpretation of the Statutes of our Founder, and a reformation of any departure from his enactments, were sought, your Lordship's predecessor in the See of Lincoln was the person to whom application should have been made, had the clause now so much insisted upon by the present complainants been at that time considered to have the force which is now attributed to it; or if the metropolitical visitation of the Archbishop was preferred to the general visitatorial authority of the Bishop of Lincoln, still the Royal sanction, and the Letters Patent of the Crown, must, according to the arguments of the present complainants, have been not only unnecessary, but improper and useless, and of no force. We do not hesitate to say that, upon a due interpretation of our Statutes, the Fellows of King's College have no absolute priority of claim to the Fellowships of Eton. The regulation by which a certain number is chosen from that body is in itself a proof of this, for if a general priority existed, a particular portion could not with any reason have been defined.

This regulation, therefore, depends not upon the provision of our Founder, but upon the authority of succeeding Sovereigns, and King's College enjoys the benefit of it to this day. Is not then the presumption of a legal revocation of the prohibitory clause, and of a substitution of such an authority as we have alluded to, equally necessary to the proceedings of the Kings Charles and James, as to those of Queen Elizabeth? We venture to assume that it will be so considered by your Lordship, and that the presumption, which may be necessary to the maintenance of our rights, may be derived from the acts of that very body in whose name the present complaint has been preferred.

We have reserved the consideration of the expedience of this long and uninterrupted usage, and we now proceed to that topic. It is alledged that the Fellows of Eton hold not only their own Livings, but also the Livings of King's College, whereby a Fellow of King's is prevented from succeeding to a Living, and a Boy from Eton to King's; and five instances are alluded to as within memory, and of these, three at one time, out of the small number of 21 Livings belonging to the latter College. But if the election of a Beneficed Presbyter is not forbidden, as we trust has been already shewn, the Fellow when elected must have previously possessed the Living from King's, as his fair right; and that the attention, which is now paid to the interests of King's College, is far beyond any statutable obligation or antient usage, the following comparison will shew:

John Belfield was the first Fellow of Eton who had ever been of King's College, and was elected June 21st, 1536.

And from the Foundation of Eton College to the year 1700 inclusively, a period of 258 years, there appear to have been 109 Fellows, of whom 35 only (that is not quite one third) were or had been of King's College; whereas, from 1701 to the present time, there have been 40 Fellows elected, of whom 35 also (that is seven eighths) were or had been of King's College; nor has one Fellow been chosen, since the year 1772, who had not originally been a Member of King's College.

So far also "from not the smallest notice having been taken of "King's College in the disposal of Livings" seven of the

Eton Livings are held at this time by Incumbents, who actually were or had been Fellows of King's College at the time of their presentation, and another of the present Incumbents was preferred through the medium of an exchange with the prior Incumbent, to whom it had been given when he was actually Fellow of King's.

It is likewise erroneous to suppose that the Livings of Eton College are very valuable. The truth is, that these, with two exceptions, are not high in the scale of value; many are very low indeed, and, as we should have presumed, far inferior to those of King's College.

Future Provosts will probably, nay, it may be expected, certainly will take the Living of Worplesdon, and then there would be little chance of a Fellow resigning his Fellowship for any preferment belonging to the College; yet the income of a Fellow of Eton in itself is not considerable, or more than will now barely support (especially if he has a family) the expenditure necessarily incident to such a situation, without a Benefice annexed. The only advantage, then, which would accrue to King's College from an alteration in the present system, would be the chance of these Livings being given to actual Fellows of King's; we say the chance of their being given; because the gift is entirely a matter of choice in the Provost and Fellows of Eton College. It may, however, we trust be fairly concluded from the preceding statement, that the present practice is not inimical to succession, nor can it be so to any extent.

It is true that King's College consists of 70 Members; but the eight Civilians, Canonists, and Physicians, must for the purpose of this investigation be deducted; next the Scholars and Fellows under 24 years of age, which on an average amount to 20; and further, it may be proper to allow for about eight more, as not being of the degree of A. M. and of course ineligible to a Fellowship of Eton. The number is thus reduced to 34. This calculation also supposes all the Fellows of King's College to be in orders except those of two years or two and a half years standing after the Master's Degree is taken.

Instead also of 70 Boys at Eton, who would be injured by the

usage in question (if greater good did not result upon the whole to all who are interested in the School) one alone might more properly have been mentioned; for that individual only who may be superannuated by the non-resignation of a Fellow, even assuming that the new Fellow of Eton should be a Fellow of King's, must be the sole person aggrieved.

There are other circumstances, however, as things stand at present, creating advantages with respect to the quickening of succession both at King's and Eton, which, when weighed with the supposed disadvantages which are complained of, would be found greatly to preponderate. In the choice of assistants in the School, an exclusive preference is given to the Fellows of King's College, which was by no means the case till within the last 60 or 70 years. This, to those who are appointed, affords a comfortable income, and an inducement to marry, which often accompanies it. The Magister Informator, and Ostiarius, are likewise from King's College; not necessarily so, but from the wish, which we sincerely feel, to promote the Members of that College upon every fit occasion. From the same reason, when Eton College or its Members recommend private Tutors to Noblemen or others, a preference is also given to King's College, and its Members selected; and from these sources in our time several have become married, or preferred, and thereby vacancies produced, far more than could possibly have arisen from the operation of the system contended for by the complainants.

The complainants assume, that a quick succession, or in other words a frequent change of Members, is a matter desirable in itself, and consequently that it was the object which the Royal Founder of the two Colleges must be presumed to have had in view. And they further assume, that the succession in King's College would be quickened if the Fellows of Eton were not allowed to hold Ecclesiastical Preferment. There are, however, only three modes in which it can be argued that such a prohibition would quicken the succession at King's. First, by the resignation of a Living in the gift of King's College, upon the election of its Incumbent to a Fellowship of Eton. Secondly,

by the resignation of a Fellow of Eton upon the acquisition of a Living. Thirdly, by a disposal of the Livings belonging to Eton to the actual Fellows of King's. The first of these could have very little effect; it would operate only in the case of such Livings as are less valuable than a Fellowship of Eton. The second also could have very little effect, for it has been already shewn that the Fellowships of Eton are in general more desirable than the Livings in the gift of that College. The third assumes that the latter Livings would be given to the actual Fellows of King's; but as they have no right to claim them, they have no right to found an argument against the Fellows of Eton from the chance of obtaining them. But will a due consideration either of the objects of the Founder, or of the nature and true interests of the Colleges, forming, as the complainants contend, they ought to form, one family, derived from the same parent, and ordained for mutual aid and common benefit, warrant the assumption, that a quick succession to be obtained by such means was one of the objects, which our Founder had in view? Was not the advancement of learning and religion the primary and main object of our pious Founder? and will not that system, which is most conducive to such advancement, be most conformable to his general views? and is not such advancement more likely to be promoted by the establishment of a comfortable provision to the Members of his two Colleges, and by giving permanence to the individuals of that body, whom he thought fit to place at Eton, than by a rapid succession, and frequent change of persons? The constitution of the two Colleges has no parallel except in the prototype from which it was drawn; our Royal Founder considered that his views would be best promoted by placing at the seat of the first rudiments of education, a class of persons, of mature years, not provided with a narrow and niggardly subsistence, but endowed with the means of dignity and hospitality, according to the condition of the times. A part of his benefaction was withdrawn soon after his own decease, and a most important change of manners and habits of life took place at no very distant period. By the happy reformation of the religion of the country, monastic solitude

gave place to domestic societies, to establishments calculated to attract and retain the youth of the highest rank and fortune in the kingdom. In the mean time another change was also gradually taking place, by the advancement of the price of all the necessaries of life; and more enlarged and extended means became necessary to the accomplishment of our Founder's object, than the remains of his bounty were able to furnish. Could these changes have been anticipated in his mind, is it to be supposed that he would have prohibited the means of meeting and conforming to them? Is it to be believed that he would have ordained a residence, and have ordained at the same time that it should be performed by persons incapable of fulfilling its objects? If this cannot be supposed or credited, it must follow that an alteration in a particular enactment might well be made to accomplish the general intent. Could the College of Eton have acquired, or can it long continue to enjoy, the reputation of being one of the highest Seminaries of learning; a place peculiarly appropriated to the union of rank and talents; to the formation of those early connections, by which the Scholar and the Noble are alike benefited in their progress through life; if its Fellows had only enjoyed or should be reduced to the narrow means to which the complainants ask your Lordship to confine them? Or would the interest of the Fellows of King's be better promoted by the chance of an early removal to a moderate income, than it is by the connections, the consequence, and the patronage that now flow from Eton, conducted, sustained, and fostered by the liberal means, and the consequent rank and hospitality of its Fellows? Is not a comfortable and honourable asylum in advancing life for those who have been engaged in the arduous labours of instruction, an object desirable in itself, and consistent with the view of the Founder of these great establishments of education? Will not a chief incentive of laudable industry and virtuous ambition to the rising generation of Etonians, many of whom, even in their early years, look up to the possible reward of so desirable an establishment as a Fellowship of Eton, be taken away? And will not the situation of the Masters and Assistants be at once

deprived of its principal recommendation in the eyes of young men of talents, if the object of the present complaint shall be attained? Have the complainants shewn any sufficient reason for the sacrifice of so many great and general advantages, and for the destruction of a system that has stood for so many years? We venture to assert that they have not. And from the premises which we have submitted to your Lordship, we conclude, in opposition to the complainants,—1st. That the Statutes of our Founder, as they now exist among our records, do not prohibit the usage of which the appellants complain. And 2d. That if we shall be found mistaken in this, yet nevertheless that the usage may, and ought to be sustained by some other Statute established by the Founder himself, giving authority to succeeding Sovereigns to reform or dispense with his ordinances, or by some Act of the Legislature of the kingdom, although the parchment, on which such Statute or Act of Parliament may have been written, cannot be produced at this distant period of time. And our present Fellows have no apprehension of that dilemma, on which the complainants have, not very graciously, endeavoured to place them: they have each in his turn taken the oath in the form prescribed by our Founder, and we humbly conceive they have not violated that solemn obligation.

All which, with unfeigned duty and respect, we submit to your Lordship's high wisdom and judgement.

Extract from the 23d Statute of Eton College, referred to in page 8.

Stat. 23. Quomodo succurritur Presbyteris Sociis Scholaribus Capellanis Clericis et Chorustis aliisque personis ejusdem Regalis Collegii in Infirmitatibus eorundem.

Item quod debilibus et infirmis humanitatis præbere præsidium jubeat charitas et pietas interpellet Statuimus ordinamus et volumus quod quilibet Socius presbyter dicti Collegii nostri si eum contigerit infirmari pro tempore ejusdem infirmitatis suæ

dummodo perpetua, et incurabilis non fuerit in et de dicto Collegio tunc percipiat quantum ipse sanus esset alias percepturus. Si verò infirmitate perpetuâ et contagiosâ laboraverit quod omnino reddatur inhabilis ad debitum ministerii sui in dicto Regali Collegio gerendum tunc volumus quod Socius talis extra dictum Collegium Regale omnino in aliquo honesto loco moraturus, si cessante dolo fraude et malo ingenio tantum in Beneficio Ecclesiastico Hæreditate Patrimonio aut Feodo seculari vel pensione perpetuâ annuatim non habuerit, summam decem librarum de bonis dicti Collegii nostri per manus Bursariorum pro totâ et omni exhibitione suâ annis singulis realiter percipiat et non ultra. Si verò in Beneficio Hæreditate Patrimonio vel seculari Feodo seu pensione hujusmodi aliam minorem summam quantamcunque, et quamcunque sibi obvenientem obtinuerit, tunc volumus quod pro ratâ summæ hujusmodi obvenientis sibi dicta summa decem librarum ei decrescat et realiter subtrahatur.

To the Right Rev. Father in God, GEORGE, *Lord Bishop of Lincoln, Visitor of King's College, Cambridge, and of Eton College.*

MAY IT PLEASE YOUR LORDSHIP,

WE, the Provost and Scholars of King's College, beg leave respectfully to submit to your Lordship's consideration the following observations and remarks.

Presuming from the ample time allowed for searching records, examining papers, and collecting all such evidences and information, as can throw light upon the question under discussion, that we are now in possession of every document which the Fellows of Eton can produce, every argument which able legal advisers can suggest in their defence, we shall proceed, under your Lordship's permission, to examine the contents of the answer.

The reply commences, not in the usual manner, after a statement of the charges in the Appeal, by proceeding gradually to the defence, but by imploring your Lordship to consider the consequences which may attend investigation; by stating their conduct, if unstatutable, to be unintentionally wrong; by asserting that greater benefits are derived from such conduct than by observing the Statutes; and lastly, by endeavouring to excite a prejudice against the Appeal itself, as the act of a few individuals, and contrary to the sentiments of the College in general.

The grounds of our Appeal we allow to be rightly stated, with the exception of the word illegal.—This term we purposely avoided, and now protest against such usage on the part of the respondents, it being evidently their wish, that the decisions of the Courts of Law should have great influence on your Lordship's judgment in this question. Our complaint is against a violation of Statutes, not the laws of the kingdom; and the Founder has strictly ordered, that all such offences, shall be decided according to certain rules and ordinances set forth in the Statutes, and not be subject to the practice of other tribunals.

The imputation which seems to be cast upon us, of assuming that their defence rested upon the Dispensation alone, we answer by a reference to their letter, in which they send a copy of the Dispensation, and plead it as a full justification of their conduct.

We certainly did not venture to point out the consequences, or ask for any specific redress; as it appeared the duty of Appellants to set forth the causes and justice of their complaint, of the Visitor to decide and act.

The reply goes on to assume, that the Appeal is the act of a few individuals and contrary to the general opinion, and that such belief has had a strong influence on their answer. We are at a loss to conceive that a defence, which has truth for its object, can consist of any points beyond a disproval of the charge and a justification of the accused party; in drawing up such a defence the charges alone, not the number of the accusers, must be considered.

In respect, however, to the insinuation of a small party promoting the Appeal contrary to the wish of the majority, we thus reply;—that a regular Congregation was summoned for taking the subject into consideration, sanctioned by the Provost, at which every person but one, who is the son of one Fellow of Eton and nephew of another, assented to the measure. The Appeal itself was signed and sealed by the Provost himself, and by his permission and desire, and by a vote of Congregation, carried to your Lordship at Bugden, by two Fellows specially deputed. No canvassing for votes, no undue influence was resorted to, directly or indirectly,—the opinion of every Fellow was left free, and we confidently assert that the general sentiment of the College is in its favour, arising from a conviction that the contents of the Appeal are true.

The Respondents open their defence with denying our assertions that the 25th Statute was deemed prohibitory of holding livings previous to the 8th year of Elizabeth, or that the Dispensation was granted for the express purpose of releasing the Fellows from such prohibition. They likewise appeal to the 23d Statute in their favour, and produce two instances of Fellows holding Livings.

We did indeed expect, that after so long an interval, they would have presented your Lordship with a complete list of such Members as had taken Livings, from the foundation to the year 1566, but instead of such a list, they state the great difficulty of ascertaining the presentations or resignations, and the probability that the early records were taken to Windsor, to which the loss from damp and carelessness must be added, so that after all their search, they are enabled to produce only two instances. We are ready to allow the possibility of the record lost being sent to Windsor; of the plate sent there is indeed a complete inventory, but of records no mention is made; and as such documents as the Statutes, Charter, and all other important papers, are safe in the muniment-room, it is, as we allow, barely possible. The time employed in research we trusted would have overcome every difficulty—of the damp and carelessnsss we can say nothing; it does, however, appear

extraordinary, that only two entries, at the distance of 86 years from each other, should have escaped all these ravages, and these too of Fellows holding Benefices.

As the respondents have not thought proper to bring their arguments to a point, we are reduced to the unpleasant necessity of collecting what may appear to us the statutable defence, which they now set up and assert to have existed, as well as to have been acted upon from the foundation of the College to the present time. We conceive them to argue in the following manner:—By the 9th Statute the election of a Beneficed Candidate is not prohibited; by the 25th, a Benefice previous to election is not rendered a disqualification; by the 23d, the tenure of a Benefice is contemplated, and the two examples prove, that Livings were held by Fellows previous to the Dispensation: such we presume their reasoning must appear, stripped of all extraneous matter, as reference to the Statutes of King's College and the Petition to Charles the First; and we are ready to admit, that, if upon a full examination of the Statutes such reasoning be correct, and sanctioned by the practice of the College previous to the 8th year of Elizabeth, not only the Dispensation was at that time unnecessary, but must be so at present; and we can only express our surprise that it should either have been sued for by the Fellows of that time, or pleaded by the present, as the authority for their taking Ecclesiastical Preferment.

Having thus stated, and we trust accurately, the defence of the respondents, we beg leave to lay before your Lordship our reasons for not admitting the correctness of their assertions, either as to their agreement with the Statutes, or the usage of their predecessors.

We shall commence with a statement of the practice of Eton College from the earliest to the present time; and this we shall divide into three distinct periods—the 1st from the foundation to the year 1556,—the 2d from that year to 1769,—the 3d from that year to the present time.

FIRST PERIOD.*

1440. Johannes Clericus, Vice Provost.

1443. At the second Foundation it is thus stated:

"Præterea attento, quod Johannes Clericus dimisso quodam "Beneficio, quod prius habuerit satis competenti prælegit "in eodem nostro Collegio ut Socius ejusdem Deo deservire "gratiosè dispensamus cum eodem modo Vice Præposito ejus- "dem, quod ipse quoad vixerit semper et continuè dum in "eodem Coll. Socius steterit V. P. ejusdem sit statuto nostro "in contrarium edito non obstante."

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* *St. Alban's, Wood-street.*

CATALOGUE OF THE RECTORS.

Newcourt's Repertorium.

Richard Hopton, 9th Julii, 1477.
W. Betham, 2d December, 1487, resign. Hopton.
Joh. Person, 13th Maii, 1492, mort. Betham.
Hugo Francis, 23d Maii, 1493, resign. Person.
W. Smith, 23d Jan. 1497, resign. Francis.
R. Smith, 8th Sept. 1502, resign. Waller.
John Grove, 26th Oct. 1504, resign. Smith.
R. Skipwith, 9th Dec. 1505, resign. Grove.
R. Lupton, 10th Nov. 1519, resign. Skipwith.
Wynnesmore, 24th Oct. 1523, mort. Lupton.
J. Blith, 1524, resign. Wynnesmore.
W. Catteryche, 1545, resign. Blyth.
W. Boswell, 1458, mort. Catteryche.
W. Pelleware, 1558, mort. Boswell.

St. Mary Axe.

Hugo Francis, Rector resignavit 1480, elect Socius, 1489, Jan. 12.
R. Hinton, Instit. 11th Feb. 1489, resign. Francis.

As it is most probable that he resigned previous to his election, as institution does not necessarily follow immediately presentation, this may be deemed a second instance of resignation before election.

17. Rd. Hopton St. Alban's Wood-street 1477 cessit Coll. 1478 resign. Rector 1487.
33. Gul. Withers Soc. 1477 Piddle Hinton 1480 cessit Coll. 1481.
34. John Sutton 1478 loco Hopton vac. 1479.
36. T. Stevenson 1479 Petworth 1485 vac. 1486.
37. G. Betham 1482 St. Alban's 1487 resig. Hopton vac. 1488.
38. G. Atwater 1482 Piddle Hinton 1487 vac. 1488.
42. T. Person St. Alban's 1492 vac. 1493.
Everdon 1496 vac. 1497.
Rd. Hopton re-elect. ut videtur 1486.
Hugo Francis 1489 St. Alban's 1493 vac. 1494 resig. Rect. 1496.
Joh. Sparke loco Atwater 1488 Everdon 1500 vac. 1501.
Joh. Edmund 1491 Petworth 1496 vac. 1497 mort. 1502.
Walt. Smith 1492 St. Alban's 1496 vac. 1497.
Aliter 1497 vac. 1498.
R. Kite loco Francis 1494 Stourminster 1501 vac. 1502.
Joh. Grove 1498 St. Alban's 1504 vac. 1505.
Rd. Martin loco Smyth 1498 East Wretham 1495 mort. 1503.
Walter Smyth re-elect. 1501.
G. Horman Mag. Infor. East Wretham 1495 Soc. elect. loco Kyte 1502.
J. Balkey 1515 vac. 1520 Instit. Titchwell 1538.
Rd. Wynnesmore 1517 St. Alban's 1523 vac. 1524.
G. West 1518 Everdon 1522 vac. 1523.
G. Smyth 1521 Everdon 1529 vac. 1530.
Thos. Mandyl 1521 Petworth 1531 vac. 1532.
G. Wall 1524 Titchwell 1530 cessit 1531 resig. Rect. 1533.
Simon Benson 1524 Stourminster 1535 vac. 1536.
J. Hunton 1529 Stoke Gursey 1536 or 1546.
Wm. 1530 Maple Durham 1537 vac. 1538.
Newington 1538 vac. 1539.

Rd. Wells 1532 Rector of Christ Church diplex present. 30 Jan. 4 Oct. (inter quos resignavit.)

G. Heynes 1533 Piddle Hinton 1538 vac. 1539.

G. Wetherton loco Hunton 1536 Stoke Gursey 10th Oct. Maple Durham 19th January 1538 vac. ante St. Mic. 1539.

Joh. Patmore loco Heynes 1589 Stoke Gursey 1544 vac. 1545.

G. Goldyng 1539 Maple Durham 1544 vac. 1546.
Piddle Hinton 1550 vac. 1552.

Wm. Bruerne 1544 Maple Durham 1546 cess. 1547.

Aug. Cross 1547 loco Bruerne 1551 Vicar Spoliat 1551.
Stourminster 1559.

G. Dobson 1547 Southmere 1554 vac. 1555.

Rd. Boswell 1547 St. Alban's 1548 vac. 1550.

J. Johnson 1552 loco Cross.

Mich. Smyth 1554 Petworth 1561 vac. 1562.
Everdon 1595.

Noke 1561 cessit Coll. 1568 Rector Tempsford 1575.

Thomas Smith 1563 St. Alban's 1570 is reported to be the first Fellow, who took a Living under the Dispensation, and died within the year.*

The above list is taken from a manuscript in the British Museum, written by the Rev. Roger Hugget, formerly Conduct of Eton about the year 1760. Not entertaining the least notion that the Records had perished since that time, we fully expected the same list would have been sent from Eton College, as it now cannot be compared with the original (since we cannot but suppose that the name of every Beneficed Fellow would have been produced) your Lordship will attach as much credit to it as you may think proper, where however it agrees with the Register, &c. it certainly deserves credit.

We likewise have given the Dispensation of I. Clerc at full length, that the matter may be fairly examined without surmise or suggestion.

* The word *vacat* appears to be used indiscriminately to signify resignation of a Fellowship or Living.

SECOND PERIOD.

1566. An. El. 8th.

Queen Elizabeth in consequence of sute made to her, granted a Dispensation enabling each Fellow of Eton to hold with his Fellowship, one Benefice not exceeding 40 marks per annum.

The above Dispensation being confined to Livings alone, and not extended to other Preferment, John Chambers Fellow of Eton sued for, and obtained a private Dispensation to enable him to hold a Canonry of Windsor.

" In your Letter the Fellows are said to hold greater Livings " with your Fellowships than the value of the said Prebend, " and that our Dispensation with your Statute may be more " duly observed, we further will and require you to enter " this our Letter and Order in the end of your Statute Book, " and this our Letter shall be your sufficient warrant, and " Dispensation, and discharge."

" Given under Signet, at our Manour of Richmond, 8th " day of March, 44th Year of our Reign."

The above Letter was confirmed by another Letter of King James I. to the said J. Chambers, (apparently because the validity of the Queen's Letter was thought to cease at her death.)—" Given at our Palace of Westminster, 24th of Feb. 1603, anno regni primo."

Charles I.

Dr. Collings took out a Dispensation to hold a Canonry of Windsor, &c.

Charles Rex: We, being informed that " Dr. Collings, " our Chaplain of Eton, cannot hold his Fellowship together " with the said Prebend by the Statutes of the said College, " above the space of a year without our gracious Dispensation, " know ye, that the said Dr. Collings may hold his Fellowship,

" and the next Prebend of Windsor, together with two Eccle-
" siastical Preferments, not exceeding 40 marks per annum in
" our books of valuation, being the usual rate granted to the
" Fellows of that College by one of our predecessors."

1621, Charles Croke resigned his Fellowship upon being presented to the Living of Agmondesham, it being above the value of 40 marks per annum.

The case of Dr. Waddington, unexplained as it is given, can never be produced as a precedent for the interpretation of the Statutes, but as a solitary and extraordinary instance of total disregard of the Statutes, and practice of 286 years.

The holding Preferment by Royal Dispensation, in addition to the Living granted by Queen Elizabeth, continued in practice until the year 1769, at which time a change took place.

THIRD PERIOD.

1769

A Fellow having the offer of a Canonry of Windsor, and unwilling to sue for a Dispensation as contrary to his oath, introduced the construction of " adeptus fuerit" as a simple future, and a new practice by resignation of his Fellowship, acceptance of the Canonry, and re-election to the Fellowship. The whole case is so well related by a Fellow of that time, that we think it proper to transcribe the Letter.

Walkern, June 23d, 1769.

" DEAR SIR,

" I am favoured with your Letter, wherein you inform
" me that you are promoted to a Canonry of Windsor. And I
" take the first opportunity of sending you my congratulations
" on your present, and my best wishes for your future promo-
" tion; but I cannot help expressing my surprize at the
" method proposed in order to hold your Fellowship with the
" Canonry.

" Dr. Sleech, when Fellow of Eton, was, I know, made " Canon of Windsor, but he had a special Dispensation for " holding his Fellowship with the Canonry.

" Dr. Cooke, I presume, now holds his Fellowship by a like " Dispensation.

" This has been the usual way of taking Preferments that are " inconsistent with our Fellowships by Statute. And for my " own part, I can see no reason for having recourse to a new " method, which may tend to establish a very pernicious pre- " cedent, and be attended with many bad consequences.

" You say that Dr. Littleton and Dr. Waddington were " re-elected under like circumstances.

" The case of Dr. Littleton, you will find on a more strict " examination to be widely different. He forfeited his Fellow- " ship by neglecting to take the oaths to the Government in " due time, and not by the acquisition of new Preferment. " This was a very singular case, and not to be drawn into " precedent. It has not indeed the least resemblance to the " present case, which is exactly similar to that of Dr. Sleech. " I believe that you are mistaken with regard to the re-election " of Dr. Waddington, I never having met with any entry " relating to such an Act of the College. I rather imagine " that he held his Fellowship after he was made Bishop of " Chichester, if not by a Royal Dispensation, by the favour " and connivance of the Provost and Fellows, they never " proceeding to declare the vacancy, and this seems to be the " most natural expedient upon a like occasion.

" Thus I have given you my sentiments on this affair " frankly and freely; assuring you at the same time, that I " shall be always happy to serve you in any thing I think " consistent with my oath of admission.

" But while you resolve not to apply for a Dispensation even " for your own security, because you think such application " contrary to your admission oath, you cannot, I think, my " friend, reasonably desire me to concur in a measure for your " security, that is in my opinion directly contrary to the " Statutes and will of our Founder, whose Statutes I have " sworn to obey, for this you cannot but see would be in effect

" to desire me (to act contrary to the persuasion of my con-
" science in order to save you from acting contrary to the per-
" suasion of your conscience) to perjure myself in order to save
" you from being perjured.

" However, as the Provost, Vice Provost, Dr. C. and
" Dr. Apthorpe make no objection to this manner of proceed-
" ing, and have promised to re-elect you, there is no occasion
" for my concurrence, I shall therefore set out, &c."*

The system introduced in the year 1769 still remains in force, but how often it has been resorted to your Lordship can ascertain by reference to the Records of the College. By means of this and other methods all restraint is completely removed, and every Fellow accepts and holds whatever Ecclesiastical Preferment he can procure.

It cannot have escaped your Lordship's notice, with what caution and forbearance the Statutes now brought forward in defence are handled. No construction or interpretation is given to the 23d, so that we are left to make the application as well as we are able. That it ought not to have been quoted at all, we shall endeavour hereafter to shew.

In the 25th Statute, adeptus fuerit is attempted to be proved a simple future, from a comparison with King's College Statutes, but they do not state that such tenses do not necessarily imply such a future signification.

It is well known in the Roman Law, that a sentence set down with the verb 'sum' of whatever tense it be, means that the sentence is ipso facto incurred, unless by a future participle its nature be altered. " Verba esse, et erit, quando per se
" pronuntur, habent, atque retinent Tempus suum, cum verò
" præterito junguntur, vim suam amittunt atque in præteritum
" transeunt."—*Aulus Gellius—Noc. Attic.*

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* This Letter was written by the Rev. Mr. Southernwood, Fellow first of King's, afterwards of Eton College, and is dated from Walkern, a Living of King's College, which he held till his death, upon which his papers were left to Mr. Betham, a Fellow of Eton, and by him to Dr. Glynn, who bequeathed them to King's College.

According to the most usual grammatical construction "adeptus fuerit" would be styled Futurum exactum; future as to the promulgation of the Statute, but actual possession as to the Fellow.

The difficulty attending such tenses as "fuerit" is acknowledged by all grammarians, as they are used for the present, past, or future. Instances of which may be easily produced from the Statutes. In affixing therefore the sense, the context or intention must be the guide, according to the rule laid down in the Statutes themselves: "Juxta planum sensum communem "intellectum et expositionem grammaticalem et literalem "magis et aptius ad casum, et prætensum dubium de quo "quæritur et agitur applaudentem."

A person, therefore, who wishes conscientiously to understand the meaning, will first examine the Statutes upon this point. In which it will be found that leave is given to the Provost in the most express, and explicit manner, to hold "Quæcunque "Beneficia Ecclesiastica unum vel plura" but that no such leave is given to the Fellows. That under a Statute of disqualifications, it is stated that one who shall have gained "Beneficium Ecclesiasticum" must resign within a certain time. That under the 23d Statute, to a Fellow infirm and deprived of all other statutable allowances, and sent away from College, "Beneficium" below £10. per annum in value, is allowed to be held in diminution of, not in addition to, the salary of £10. ordered to be paid to him annually. He will find residence enjoined, and other duties incompatible with the Cure of a Parish Church, or other preferment. If he looks at the practice of the earliest times, he will find it contrary to the possession of a Living either previous or subsequent to the election. He will find Dispensation to have been sued for and granted as a release from this very point, and the present Members to have pleaded the same Dispensation in their own defence. From such an examination, the result must be a conviction that each Fellow was intended to belong to Eton College exclusively, in which annual offices, and other duties, afforded sufficient occupation of their time. Unless indeed it

should be admitted, that the disqualification consisted in the time, not the act of possession, so that a person presented to a Living within the least possible time before his election was intended to remain, but the Fellow, who accepted one subsequently, to quit his Fellowship; an absurdity which can scarcely be defended.

Admitting the Colleges of William of Wickham to have been the prototypes of Eton and King's, which we do most readily, not only from the assertion of the reply,* but also from a record of an agreement styled "amica compositio" between these Colleges for mutual defence, A. D. 1444, during the life of our Founder, wherein is set forth the identity of the foundations as to their constitution; we conceive that a reference to these prototypes will afford considerable assistance in interpreting doubtful passages, as any deviation from the model either by addition or omission must strongly mark the intention of our Founder.

In the Statutes of St. Mary, Winton, no mention is made of property either temporal or spiritual, nor any disqualification annexed to it in the corresponding Statute "Propter quas "causas, &c."

The insertion therefore of it in the Eton Statutes clearly shews that the Founder intended such disqualification. And the clause being taken from the New College Statutes, which affix an ad valorem tenure to each property, and no such value being affixed to Ecclesiastical property in the Eton Statutes, but Benefices forbidden under general terms, we conclude that the objection lay against the tenure of any Livings without regard to their value.

The 23d Statute, or at least the part quoted, ought not to be resorted to for the interpretation of any other Statute, for the following reasons.

It is framed for a Fellow labouring under the leprosy, (so the same disease is termed in the Statutes of Magdalen

* By the word reply in this, and other places in this document is intended the answer of the Fellows of Eton.—*Note by the Editor.*

College, Oxford, "morbum perpetuum contagiosum (Lepram "quod absit,") which disease has long since ceased in England.

It is contrary to the tenor of the Statutes in general, and to the following Statutes in particular: "De communi annuâ "liberaturâ" by depriving the Fellow of gown cloth—"De "communis" by depriving him of commons—"De absentiâ" by ordering him to remain out of College entirely—"De "devillatione," which forbids a Fellow to sleep out of College within five miles of Eton; in deducting from his annual stipend of £10. as much as he shall receive from other property below £10. per annum; and lastly, if Beneficium in this place signify a Living, by permitting him to hold one under £10. per annum contrary to the 25th Statute.

A Statute, so contrary to all the others, ought not to be brought forward to interpret another, to which itself is an exception; and a Fellow ought to be precisely in the state there set forth before he can claim under this Statute.

There is moreover a difficulty respecting the words Beneficium Ecclesiasticum, and Beneficium.

It may be asserted that there was no need to use that epithet in repeating the species of property, but such is not the usage of the Statutes, they are redundant rather than concise, and where the word Ecclesiasticum is left out in other Statutes there is a qualifying adjective or other term.

The sentence immediately following runs thus: "Si verò "quis Capellanorum, Scholarium, Clericorum aut Chorustarum "sive tredecim pauperum puerorum aliquâ infirmitate labora- "verit, &c., nec Beneficium habeat nec reditus unde possit "sustineri nec amicos, &c."

In the above sentence Beneficium is applied to Scholars from eight to nineteen years of age, to Choristers, Singing Men, and poor Scholars forbidden to take Orders before twenty-five years of age; and lest it should be supposed that Beneficium applied to Capellani alone, who were in Orders, we beg leave to state that the sentence is taken verbatim from the Winchester Statutes, with the exception of the persons, it being confined to boys

alone. " Si vero aliquis Scholarium," &c. What meaning therefore, can we affix to the word Beneficium, as a Scholar of Eton swears he has not five marks per annum ; unless it be that of an annual payment issuing out of tythes, or lay impropriation. From the above statement we conceive ourselves justified in asserting that no Fellow held Ecclesiastical Preferment previous to the year 1769, either under the 25th or 23d Statutes; the two cases quoted by Eton College coming under neither of them: not under the 25th as being subsequent presentations; not under the 23d, as the Livings were above £10. per annum. Upon what pretence they were holden, we know not, certainly not by virtue of any Statute.*

A Dispensation is a voluntarily act of grace and favour releasing to any single person or community of men, the obligation of a Law or Statute, others remaining bound not only in other cases, but the like.

This definition will suit exactly the Dispensation granted by Queen Elizabeth. By the general grant she released the whole body from the Statute under certain limitations ; by the private one she released John Chambers, the others remaining bound in that particular.

From what she released the whole body, the preamble states, and probably in the very words of the suit; and the present Fellows of Eton having pleaded that Dispensation as a full and complete justification of their conduct, have identified themselves with those, who sued for that Dispensation, and thereby admitted that a Fellowship is not tenable by Statute, but by virtue of the said authority. We moreover assert, that the construction introduced in the year 1769, and still maintained, was, and is contrary to that which was received and sanctioned by an usage of 329 years, and likewise that the interpretation

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* One of the Cases quoted.

Richard Hopton took the Living of Piddle Hinton at the time that the College was nearly destroyed by Edward IV. It being his intention to unite Eton with Windsor, the Fellows during some years had no stipends, and were reduced to four in number.

of the 23d Statute was never heard of previous to the agitation of the present question, a space of 375 years.

From all which it follows that the defence attempted to be set up, being neither confirmed by practice, nor the true construction of the Statutes, is groundless and untenable.

No notice having been taken of our arguments against the Dispensation, as to its validity, we pass over all allusion to that part of our appeal.

As the Fellows of Eton make frequent reference to the conduct of our predecessors during the Reigns of Charles I., Charles II., and James II., we reply that no acts of our predecessors bind us, and particular if unstatutable. The temper of the times, when prerogative was in many cases paramount to law, may be alledged in their excuse. The cause which they supported was just and right, but the means used, unstatuable. The cause of Eton College unjust, but the defence statutable, in the refusal to obey letters mandatory, and even the decree of Archbishop Laud, as it was unstatutable.

Had the Visitor interpreted the Statute as he states in his letter, "concerning the choice of Fellows from King's College "to Eton, I am clear of judgement, as I now stand advised, "that the Statutes of Eton do require it to be so," and not given way to practice, succeeding Visitors would have enforced such a decree without having recourse to the support of Regal Authority. No merit, however, attaches to the Fellows of Eton, as they accepted Dispensations, when according with their wishes, and opposed them, when contrary.

Having replied to the defence drawn from the Statutes, and grounded upon existing documents, we proceed to one of a direct contrary nature, consisting of presumption and conjectures.

Our supposition that the Dispensation was ignoranter concessa, is declared improbable from the well known character of Queen Elizabeth. The instance however, advanced, tends to confirm, rather than overthrow that opinion. Had the Queen read the Statutes, with what propriety could she have ordered the visitation stated. The statutable election of the Provost was

the real cause, as her Letter shews. " We hear that the " Fellows of our College of Eton next Windsor, without our " assent, and without our pleasure therein being by them " sought, have chosen one to be their Provost, of whom an " evil fame is dispersed." Vide Strype. The case, as stated by Strype, shews that the visitation was not by Statute, but under a Commission. The reason for displacing the Provost is not bad conduct or character, but because the election was seemingly without consideration of law or congruence. The Fellows, likewise, who refused to acknowledge the commission, were expelled. The Archbishop, who, as Visitor, was bound to guard faithfully the Statutes of Henry VI., thus writes to the Secretary : " That he had sent him a copy of the qualifications " of the Provost according to the Founder's Statutes. Not that " either that Statute (grounded on an Act of Parliament) or any " other should prejudice better order than was therein devised, " as some injunctions, which they should devise for their order, " should not be peradventure agreeable to the old Statutes." *Strype.*

That the Dispensation was granted at the instance and advice of Sir Thomas Smith, is nothing but surmise; others have attributed it to Provost Day. But Sir Thomas Smith, however great in abilities, was not very nice as to Statutes. As he accepted the Provostship from Edward VI. in direct opposition to the Statutes, and a Layman instead of a Sacerdos, on which account he was removed by Queen Mary, 1554, notwithstanding he pleaded a Dispensation of Edward VI.

The succeeding arguments are employed for the purpose of inducing your Lordship to countenance the presumption of some legal and competent authority, according to the usage of the Courts of Law. With this intent various cases are cited. We shall not attempt to examine them, as we do not admit that any reference ought to be made to the practice of such Courts in the present question. The plea of presumption can only be set up when no original cause can be produced, and such is not the case at present.

The Defendants when called upon to state upon what autho-

rity they acted, and whether they had an Act of Parliament, replied that they had no Act of Parliament, but transmitted a copy of the Dispensation, affirming it to be of full and sufficient authority.

In this Instrument no reference is made to any Act of Parliament, but it is evidently a grant originating with the Queen, and an act of private grace and favour.

The terms contained therein have been complied with, and acted upon both by the then existing body, and all succeeding Fellows to the present time. And the other Dispensations, which we have quoted, prove that similar acts of Royal favour have been received, and deemed valid without any hesitation.

The Act of Parliament requisite, must either have been a public Act comprising more subjects than the Eton Dispensation, or a private Bill confirming that grant.

That a public Act should have perished without the least trace of its existence being left, and that of so late a date as the reign of Elizabeth, is we believe without example; nor will it gain easy credit that even a private Bill should not have been noticed, when we find in the Rolls of Parliament during that reign, Bills recorded, confirming Letters Patent to other Colleges. But that the Act in question should not only be lost from the public Records, but even from the Archives of Eton College, so completely that no copy, or trace, or even tradition remain, is a matter in itself so incredible as to warrant a direct opposite conclusion.

As therefore the Dispensation, which is allowed to be a real Act, whatever its defects may be, refers its origin to the Queen's will and pleasure, or, in other words, the prerogative power as at that time exercised; the presumption of an Act of Parliament is rendered entirely unnecessary. Admitting, however, the authority of those cases, upon examination it will be found that they do not apply to the question before your Lordship, inasmuch as the presumption of Grants, Letters Patent, Charters, and Records, allowed to be supplied in those cases, were all cases, in which the Crown was capable of making such Grants, &c. But in a few pages following, in the same volume of Mr. East's

Reports, in the case of Goodlitle v. Baldwin, (11th East, 488) where the same arguments were used, the Court of King's Bench decided that there could be no ground or room for the admission of such presumptions, in cases where there existed a prior Statute precluding the Crown from any such power, which we contend the Statutes of Eton College do; consequently all such instruments, even if they were actually granted, were void ab initio, and those authorities therefore of no weight in the present case. But it is somewhat extraordinary that the Respondents should be driven to implore your Lordship to presume a Statute to authorise a measure, which from Queen Elizabeth's time hitherto, they have adopted, without any reference to any idea that any such Statute ever existed. And before that time the only instance in which the Founder dispensed with the Statutes, in this respect, he made a special, and not a general exception, which affords a contrary inference to that the Respondents contend for. Such legal arguments, however, we do not presume to touch upon, further than just to state that we do not admit of their application, leaving all such observations to our Counsel, if it should please your Lordship to have the case argued before you upon legal grounds, in which we pretend not to be conversant.

The supposition that the Founder himself left some Statute empowering his successors to alter the Statutes, as the change of times might warrant, is so directly at variance with the strict prohibitions on this very point in the Statutes themselves, that we beg leave to abide by them as our answer.

The expedience of the measure, which forms the most prominent feature of the defence, and leaves nothing unattempted to prove the breach of the Statute more beneficial than its observance, we enter upon with reluctance, as having in our Appeal avoided whatever might give personal offence; we fear that on such an investigation it will scarcely be possible. We shall, however, do our utmost endeavours.

Taking the matter in a general view, we cannot allow that those persons, who obtained the Dispensation, looked forward to any of those beneficial consequences, which are attributed

to this measure, nor do we admit that they in any wise proceed from that cause. Indeed, of the various topics contained under this head, there is not one, to which we can give an unqualified assent.

The election of actual Fellows from King's College we claim as our right, and therefore cannot admit the list adduced, as an act of good will and kindness, but on the contrary, we conceive that the election of every person not belonging to the College, whilst a proper and fit candidate can be found in our Body, is a violation of the Statute, and infringement of our rights.

The contradiction of our assertion that not the smallest notice was taken of the Fellows of King's in the disposal of their Livings, is a mistatement of our words, which ran thus: "In the *arrangement* of their Livings," alluding to the arrangement which took place 1767, of which your Lordship has a copy. The seven Livings adduced, confirm the truth of our statement, being the presentations of individuals, and not of the Body collectively.

The following statement will shew more clearly what attention has been paid to the Fellows of King's College on this head.

From 1440 to 1815, we are unable to find more than 33 Fellows of King's presented to Eton College Livings; and, as we before stated, since the arrangement of 1767, all these presentations have been options, or private gifts to relations or friends.

On the other side, nine Fellows of Eton have retained King's College Livings with their Fellowships.

The enumeration of the Fellows of King's, classed as to age and degrees, for the purpose of shewing the small number qualified for an Eton Fellowship, is by no means correct. The ten Members on the different lines may be in Orders, or quit those lines and take Orders, and even be presented to a College Living, as stated in a decision by our Visitor upon an Appeal.

The eight Bachelor Fellows may be rendered eligible by a Lambeth degree or mandate, at least such, we presume, must have been the case with one of the present Fellows of Eton.

The appointment of the Assistants exclusively from King's College, which is set forth as an extraordinary act of kindness

and attention, cannot be placed to the Fellows, such appointment being in the upper and lower Masters. But the real motive for the preference given to Fellows of King's, must be ascribed to the same cause, which induces the Heads of all similar Foundations to avail themselves of the services of those, who have been brought up within their walls, as being well acquainted with the customs and mode of education. To expedience, therefore, rather than kindness, these appointments must be placed. Our assertion that the Members of King's and the Boys of Eton are benefitted by a quick succession, will remain valid, until it can be proved that superannuation is beneficial to the one, and an early provision in life hurtful to the other.

In respect to Eton College, as the Fellows have little or no concern with the management of the School, and no duties to discharge requiring knowledge from practice and experience, a change would be scarcely noticed. That the Provost has duties which require permanency, we readily grant.

The reply states, that the Statutes do not order their Livings to be given to King's College; granted; nor to the Fellows of Eton, and a Benefice moreover is incompatible with a Fellowship. In what manner then ought Trustees (for such we deem the Provost and Fellows) to dispose of this property? To the benefit of the Society in general, or of aliens, their own friends and relations? The Scholars, who are undoubtedly Members, are in their own persons incapable of taking any such Preferment, but can derive great benefit from a proper disposal of it, if given to the Fellows of King's to promote succession. But the case is still stronger; the prohibition is by some means evaded, and each Fellow takes one Eton College Living; this act renders the property divisable, and as the Scholars have a right not only to their statutable allowances, but to a participation of whatever beyond the letter of the Statutes may be divided "in communem utilitatem," their share of such property ought to be disposed of as much as possible to their advantage, and this can be effected no otherwise than by presenting Fellows of King's, in order to prevent superannuation. In the time of the Founder, and even as he contemplated the future state of his

College, the loss of King's College was not so much felt, as a maintenance, clothing, and education, free from all expence, were in themselves objects of the greatest value; but according to the present existing circumstances, the disappointment is a very serious evil; on this account the arrangement of 1767, by assigning the whole of the Livings to the Provost and Fellows, without any regard being paid to the interest of the Scholars, appears unjust, neither can a continuation of such a system be deemed less so. It is, therefore, a duty which they owe to their own Members abstracted from all good will to King's College; and instead of entering into calculation of chances, and exactly defining rights, and balancing probabilities, we venture to assert that were all the Livings, even those held by the Fellows themselves, presented to the Members of King's College, for the purpose of benefiting at the same time the Scholars of Eton, and the Fellows of King's, they would be found a very inadequate compensation for the privations which the one part has undergone, and the other is still labouring under.

The object of the Founder is well known to have been the promotion of learning and religion, but the Statutes will shew that he did not conceive that affluence necessary for this purpose, which is laid claim to, and indeed enjoyed, under the assumed plea that such was the intention of the Founder.

The allowance set forth by Statute to each Fellow, of a single room, a gown, commons at 2*s.* per week, and a stipend of £10. per annum; with all the difference that can be granted in the value of money, gives no sanction to a claim beyond that of a moderate income. Neither did it enter into his plan, that the respectability of his Fellows should rest upon splendour, and magnificence. In order to ensure respect, he enacted Statutes, punishing even with expulsion, such as failed in duty and obedience: but he left it to the wisdom of the Fellows to ensure the esteem of the Scholars by their behaviour and attention. The hospitality enjoined by the Statutes was relief to the mendicant stranger, as set forth in the Statute de hospitalitate.

The privation of property by Edward IV. has not in the

least impaired the income of a Fellow, and the support of a family is directly contrary to the intention of the Founder.

Should even some external shew be supposed necessary for preserving authority, the very means resorted to, defeat the proposed end. The greater the number of Livings be, which each Fellow possesses, the less he resides at Eton, and consequently is less seen and noticed by the Boys.

To the Fellows of Eton, no person acquainted with the internal management of the School can possibly attribute its flourishing state; much of this depends upon the caprice of parents, still more on the conduct of the Master.

The asylum of the Cloysters, which is held forth as the honorable retirement for those, who have been labouring in the School, will be found upon examination to have received few of its Members from that class. And it appears from the list of Fellows, that out of 230, not more than 20 have been chosen from the Assistants; and that even at this time it is not a settled practice, the late election will prove, at which a person, who had never been an Assistant, was chosen in preference to three Candidates, of whom two had been for many years Assistants, and one was actually in that situation. Upon a review of the arguments brought forward under the head expedience, it will appear that the Member of King's College can experience the kindness of the Fellows of Eton in three points only, namely, the Livings, the election of Fellows, and the appointment of the two Masters. In respect to the Livings, seven of them are stated to be holden by King's men at present, out of these, three have been given by Provosts. One by Provost Roberts, which procured a resignation for his son; one by Provost Davies, for the promotion of succession, the very point for which we are contending, (and we here take the opportunity of gratefully acknowledging his farther good will in a legacy of £2000. for the purchase of Livings;) and one by the present Provost. Four, therefore, only remain to the Fellows, and when two of these are known to have been presented to a near relation, the list will not tend greatly to shew their kindness on this head. In respect to the election of Fellows, one instance

alone can be brought of the election of an actual Fellow, and that person the son of the Provost, and previous to his A. M. degree in the University.

The appointment of the two Masters, we have before explained. In all the other instances and arguments, the Fellows are either very slightly or not at all concerned: but we affirm that in no degree whatsoever, directly or indirectly, any one of the subjects quoted under expedience, is caused, promoted, or influenced by the tenure of Ecclesiastical Preferment with a Fellowship.

We beg leave, therefore, to submit to your Lordship the following observations; the present defence materially differs from that transmitted to King's College; the Dispensation being apparently abandoned as invalid, unless your Lordship be pleased to sanction one of the two presumed authorities, either an Act of Partiament, or a subsequent Statute by the Founder. The present defence is grounded upon Statutes, but how such Statutes authorise previous or subsequent presentation is not set forth, nor attempted to be explained. Practice is directly at variance with any such construction; and lastly, the expedience so much insisted upon does not stand the test of examination.

We should have closed our remarks as above, had not the reply made frequent allusions to the election of Eton Fellows, denying any priority of claim on our part. We therefore humbly beg leave to submit to your Lordship's judgement the Statute of Eton "de electione Sociorum," as we conceive that the present system, even regulated as it is by Archbishop Laud, to be unfair and injurious to the rights of King's College. The Statute runs thus: "De Sociis Collegii nostri Regalis Canta-
"brigiæ vel de his qui prius fuerunt in eodem et ex causis
"licitis et honestis recesserunt ab ipso vel de Presbyteris
"Conductitiis ejusdem Coll. de Etonâ vel de iis qui prius
"fuerunt in eodem habilem et sufficientem aut alias de
"Collegiis vel locis aliis juxta ipsorum discretionem nominent
"vel eligant Presbyterum." We contend that according to

the true construction of the Statute, the election ought to proceed in the precise order therein set forth, namely, that the Electors having sworn to lay aside all hatred, partiality, and affection, should choose from the actual Fellows of King's College, a Member, or Members, provided such can be found therein, "habiles, et sufficientes," in default thereof from those who had been at King's, and so on proceeding from class to class only in default of a person or persons not being found "habiles, et sufficientes" in the immediate preceding class. And we deny that an indiscriminate choice from any one of the classes stated, is either allowed, or consistent with the intention of the Statute.

Our reasons for the above assertion are as follow:—

That the construction of the sentence, according to the plain and grammatical sense, is thus best preserved, it being a positive injunction, and not alternative as to the Fellows of King's, being without any "vel" preceding, which is an evident sign that the mind of the Founder, in the first place, determined the choice to be made out of the Fellows of King's College, so long as there were able and sufficient men amongst them to be found; but as on account of the times such deficiency might happen, he goes on to prescribe the order in which the Electors are to proceed in their choice.

That the absurdity of laying open the election to all persons indiscriminately, having previously set forth certain persons as entitled to a preference, is thereby avoided.

The Statute itself, as admitted by Archbishop Laud, was taken from the Winchester Statute, designated in the reply, the prototype of Eton College, which Statute runs thus:—"De "Sociis Coll. nostri Oxoniæ vel iis qui prius fuerunt in eodem, "et causis licitis, et honestis recesserunt ab ipso, primo qui "sufficienter sciat et valeat prædictæ capellæ juxta ordinationes, "et Statuta Coll. nostri prope Wintoniam deservire, deinde "de Presbyteris conductitiis, vel de iis qui prius fuerunt in "eodem habilem, et sufficientem, ac postea de Collegiis vel "locis aliis juxta discretionem ipsorum nominent, &c."

Upon the injunctions of the above Statute we understand that the Fellows of New College, Oxford, are invariably chosen Fellows of Winchester, and the Archbishop admits that the true meaning of the Eton Statute demands the same order of election. The preference due to the Fellows of King's College has been allowed, and acknowledged, not only by those to whom the point has been submitted, but even by the Fellows of Eton, who in the year 1755, in the case of a lapsed Fellowship, addressed the following Letter to the Visitor.

" Speramus autem Paternitatem tuam eam rationem habi-
" turam hujus honoratissimi Collegii quam Fundator ejusdem
" Henry VI. bonæ memoriæ Rex in te reposcit. Et quia du-
" bitamus an unquam Paternitas tua Statuta nostra perlegerit,
" necessarium existimamus significari Paternitati tuæ liberum
" esse undecunque hominem idoneum assumere, vel nominare
" cum hâc tamen cautione ut qui in Collegio Regali Cantab.
" educati sunt cæteris omnibus præferantur."

VISITOR'S REPLY.

" Et quia nullus in Coll. Reg. Cant. educatus quem
" omnibus præferri Statuta Coll. Prædicti postulant prout
" per literas vestras fuit intimatum nobis sese obtulit præ-
" ferendum."

It must be evident that the admission of the preference, allowed both by the Fellows of Eton, and the Visitor, can depend only upon the election being carried on according to the order prescribed in the Statute, and as such obligatory and binding, not voluntary and arbitrary.

As then the Fellows of King's College have hitherto had cause to lament that the Archbishop, contrary to his better judgement, and in opposition to the well known maxim " Quod
" non valet ab initio tractu temporis non convalescit," should by a decree irregular and unstatutable, have given sanction to a practice founded upon a perversion of the Statute, and introduced during the turbulent and unsettled state of the two

Colleges; so we humbly trust that your Lordship, upon a full examination of our reasons, as above stated, will be pleased by a true interpretation, to replace the Fellows of King's in that rank and order of election, which our Founder reserved for them when he prohibited their removal to any other College, as long as their abilities and conduct should entitle their Members to such a situation. And farther privilege than this we neither seek nor expect.

Finally, we implore your Lordship to take into your consideration the beneficial consequences which must ensue to the Members of both Colleges, as long as these Foundations shall maintain their existence, coeval indeed, as we trust, with the British Constitution itself, should your Lordship re-establish us, by a decree, in our long with-held rights. A decree which will not only ensure peace and harmony for succeeding ages between the two Bodies, but fulfil the will of our Founder as expressed in his charter, "Ut dicta Collegia nostra quæ de "propitio mutui amoris fraterni perpetuo fœdere connectan-"tur, eo perfectione ampliorcque unitate et dilectione mutuâ "solidius firmentur quo personæ dictorum Collegiorum sicut "unius duntaxat Fundationis auctoritate fulciantur."

COPY OF THE VISITOR'S DECREE.

On the fifth day of August, in the year of our Lord One Thousand Eight Hundred and Fifteen, before the Right Reverend Father in God, GEORGE, Lord Bishop of Lincoln, Visitor of King's College, Cambridge, and of Eton College, and Interpreter of the Statutes of the said Colleges; at the Palace of the said Right Reverend Father in God, situate at Buckden, in the county of Huntingdon; present, the undersigned Notary Public and Actuary Assured:

A business of Appeal and Complaint promoted and brought by the Provost, Fellows, and Scholars of King's College, Cambridge,

AGAINST

The Provost and Fellows of Eton College.

The Visitor having maturely deliberated, and, by and with the advice of his Assessors, the Right Honourable Sir William Grant, and the Right Honourable Sir William Scott, pronounced against the Appeal, and declared that the Fellows of Eton College were enabled to hold one Benefice by virtue of the Dispensing Statute of Queen Elizabeth.

He likewise enjoins all future Fellows of Eton College not to exceed the indulgence granted by the Dispensing Statute, by attempting to hold more than one Benefice, whether taken before or after their election, in conjunction with their Fellowship.

The Visitor directs that this Decree be entered in the Book of Statutes belonging to Eton College.

Which I attest,

GEORGE JENNER,
Notary Public,
Actuary Assured.

GEORGE LINCOLN.

(L.S.)

The Provost and Fellows of King's College, being by no means satisfied, as may well be supposed, with the Visitor's decision, addressed a second Appeal to him soon after the promulgation of the above decree, in the following terms:

To the Right Reverend Father in God, GEORGE, Lord Bishop of Lincoln, Visitor of King's College, Cambridge, and of Eton College.

MY LORD,

WE, the Provost and Fellows of King's College (our duty and submission to your Lordship's decree premised) humbly present ourselves to your Lordship as Appellants, in behalf of ourselves and successors, against the acceptance and use of the Dispensation of Queen Elizabeth by the Fellows of Eton, as being a direct violation of the oath, which each candidate elect must necessarily take, in order to qualify himself to become an actual Fellow:—"Item quod non impetrabo Dispensationem aliquam contra juramenta mea prædicta et contra ordinationes et Statuta de quibus præmittitur aut ipsorum aliquod nec Dispensationem hujusmodi per me alium vel alios publicè vel occultè impetrari aut fieri procurabo directè vel indirectè et si forsan aliquam hujusmodi impetrari vel gratis offerri aut concedi contigerit cujuscunque fuerit auctoritate seu si generaliter vel specialiter aut alias sub quâcunque formâ verborum concessâ ipsâ non utar nec eidem consentiam quovismodo sic me Deus adjuvet et hæc sancta Dei Evangelia."

This oath, we conceive to have been deemed by our Founder so strong an obligation on the conscience of the Members of his two Foundations, as to render them utterly incapable of making use of any Dispensation, which his successors, regardless of his prohibition, might be induced to grant. Actuated by motives of general utility to the two Colleges, we submit to your Lordship this our Appeal; humbly praying that by virtue of your visitatorial power, you will be pleased to decree, that all future Fellows of Eton are restrained by this oath from accepting and enjoying any Dispensation, at whatever time, and by whatever authority, it may have been, or shall be hereafter granted.

King's College, Cambridge, Dec. 1815.

The Visitor having, whilst the former Appeal was under consideration, declared that he was ready to receive any communications upon the subject from any individual, the following observations upon the admission oath of the Fellows of Eton, were addressed to him, by a Member of King's College, a few days after the second Appeal:

MAY IT PLEASE YOUR LORDSHIP,

The Founder of Eton College devised, and appointed two safeguards for the preservation of the Statutes. The one, a prohibition to his successors or other persons against altering, interpreting, or dispensing with the Statutes in general, or any part of them, guaranteed by an Act of Parliament. The other, by a general oath from each Fellow at his admission to keep his Statutes, as set forth by him; and moreover, by a particular and special oath against suing for, accepting or using any Dispensation.

Of these two defences, the first has been destroyed by Queen Elizabeth arbitrarily granting a Dispensation, in opposition to an Act of Parliament.

The second forms the subject of the present Appeal.

In order to understand the matter fully, it will be necessary to examine this oath in respect to the Dispensation itself, to the Fellows of Eton, and the nature and importance of the oath itself.

The Dispensation in the present case is not to be considered in respect to the power of the Crown, but as to the extent of the terms in which it is drawn up. Now in these, not the slightest allusion is to be found to the oath, and surely no implied sense can be used for the purpose of giving a meaning beyond what is actually contained in the words used by the Queen: if defective, to whatever cause such defect may be attributed, it must abide by its defects, until some new power can be found to grant an absolution, or Dispensation, full and complete. If a man make a mistake in his will, the Legatee must abide by the terms;

and a deficient Act of Parliament cannot be rectified by a constructive meaning, but must await amendment by the same power which enacted it.

The Dispensation suspends those Statutes, which forbid the tenure of Livings, and enjoins the Provost to permit the Fellows to enjoy this grant, notwithstanding any Statutes to the contrary. In all this, not a word is mentioned of the oath, which each Fellow has already taken; (and if the oath had been known to the Queen, this was the place to have mentioned it, for the conscience of the Fellows required relief on this point by some more explicit and effectual mode, than an injunction to the Provost not to interpose his authority.)

A special oath required a special release. When the Founder dispensed (a right reserved to himself) with the Statutes, or altered them, the extent of the alteration or Dispensation is marked with the greatest precision. Can it then be supposed that a power assuming his authority, and imitating him, would act intentionally with less accuracy, and expect obedience, by a supposition of its will on those points, which it had not even noticed, and yet so important as to require particular attention; for such importance cannot be denied to the oath in question?

The Dispensation, therefore, cannot but appear defective as to the oath; but as it cannot be doubted that the Queen intended to effect what she set forth, to what can we attribute this, but her ignorance of the existence of such an oath: which could only be ascertained either by her reading the Statutes, or by the recital of it in the petition for the Dispensation.

That her Majesty should have read through such a work, is scarcely probable, or that, if she had done so, she would have left unnoticed so important a point: and if the preamble to the Dispensation recites, as it appears to do, the words of the petition, as not the smallest hint is given of the oath in question, it was impossible for her to conjecture, or even suspect its existence.

It was the part of the petitioners to state the matter in general terms, that the Queen might believe that she dispensed with

merely certain Statutes forbidding the tenure of Livings, as it certainly must have excited her astonishment, had she known that the Petitioners had pledged themselves by a most solemn oath, neither to sue for, nor accept, nor use any Dispensation. The defect then must be attributed, not to the neglect or oversight of the Queen, but concealment on the part of the Petitioners.

In this assertion we are borne out by the consideration of the second part, *viz.* the conduct of the Fellows in respect to the oath, which cannot but appear most extraordinary. In direct violation of the oath, the Fellows petitioned for this Dispensation as a body, and as to individuals, J. Chambers, as well as many others, from the reign of Elizabeth to the year 1769, sued for and used such relief from the Statutes without any apparent concern or reluctance. Harsh as it may seem in accounting for such conduct, we are compelled to accuse them, either of omitting the oath at their admission, or of being totally regardless of its obligation, or of mental reservation; no other reason can possibly be suggested.

As, however, so many persons, and those of high character in other respects, are implicated in this charge, we can scarcely believe that they intentionally disregarded their oath, but attribute their conduct to the omission, a cause indeed less heavy, but of a serious nature.

This omission of the oath has indeed frequently been rumoured, but the Rev. Roger Hugget, Conduct of Eton, in his books now in the British Museum, directly accuses them of it, and states the time and place where, being himself present, he heard a Fellow, whom he names, in a conversation upon this very subject declare, that he never had taken the oath, and never would have taken it, as he could not have used the Dispensation without perjury.

The accuracy of the above person has been called in question, and in a collection of facts in many folio volumes, it is very possible that things may have been admitted which are not correct, but in this case, as he heard the speech, which he quotes, it must be a wilful act of misrepresentation, and not

in correctness. It is likewise stated by him, that in the Provost's Statute-Book, which is the general book used at the admissions, the oath in question is marked at the side, and such will be found to be the case, although the marks are now faint from their antiquity.

The omission of oaths at the present time, which are equally enjoined by the Statutes, gives a great degree of probability to the charge, to say the least of it. The omission, however, must have depended entirely upon the will of the person admitting the Fellow, and therefore in some cases, perhaps, did not take place.

The oath itself, as far as we can find, was first introduced by William of Wickham into the Statutes of his Colleges, and Henry the Sixth, taking these for his model, inserted it in the admission oaths, to be taken by the Provost and all other members of his two Foundations. It was likewise used by Provost Waynfleet in his Statutes for Magdalen College, Oxford.—And this oath forms a striking difference between these Colleges and all others, whose members only swear to observe the Statutes.

At the late hearing at the Court of Doctors' Commons, little notice was taken of the oath; Mr. Abbot did not mention it; but the Eton Civilian stated, that it was directed against the Pope, and not against the King.—This assertion is certainly not correct, as the succeeding Kings are nominally prohibited from dispensing with the Statutes. But whether correct or not, it tends to a conclusion very different from the intended one, namely, a confutation of his own argument. The Civilian maintained the dispensing power of the Pope from the earliest times, and contended, that all this power descended to Henry the Eighth by Act of Parliament; and that again it was revived by Act of Parliament in Elizabeth, and continued in the Crown at least till the Revolution. Now if this oath formed a bar to the Papal Dispensation, (as it was framed by a Bishop, who must have been a competent judge of the Papal rights, and inserted by Henry VI., whose character is too well known to permit the suspicion of his attempting any thing derogatory to the Pope,

of whom he even obtained bulls for the foundation of his Colleges, and as moreover his Statutes were compiled by the first lawyers of his time,) it must have been equally so to Henry the Eighth, as far as his authority was derived from the Pope, and likewise to Elizabeth; and thus, from the Civilian's own arguments, the Crown possessed no power of dispensing with this oath.

The admission oaths have been of great importance as a defence of the College of Eton.

Edward the Fourth, at his accession under the Act of resumption, guaranteed the rights and privileges of Eton College; but within a few years he changed his mind, and wished to destroy Eton College, and unite it to his favourite foundation of Windsor: to effect this, he did not make use of his prerogative, but wrote to the Pope, stating, that Henry the Sixth had founded a College at Eton, which was useless and incomplete, as no chapel was built, and desiring him to absolve the Provost and Fellows from their oaths, and order them to surrender their rights and charter to Windsor; and accordingly Eugenius the First issued a Bull, absolving them from their oaths, and ordering them, under a heavy anathema, to surrender every thing to Windsor College. Provost Westbury refused to obey this Bull, and entered a protest against this power of the Pope, as having sworn to defend the rights of the College, and to accept no absolution from his oath, declaring, that whatsoever he might surrender would be under corporal fear. In this opposition he continued, and kept the College together many years (about 15.) The King afterwards changed his mind, and wrote to the Pope, desiring the Bull might be recalled, as he had been misinformed in respect to Eton, which he now found to be of great utility. The Pope Eugenius the Second wrote to the Archbishop of Canterbury, desiring him to examine the affair, and withdraw the Bull.—To what can the preservation of Eton College be attributed, but the resistance against the Papal power, grounded upon the Provost's oath.

The oath against Dispensation was likewise pleaded by Eton College against King Charles II. upon the election of Dr. Cradock, when, after a hearing of Counsel on both sides, before the Privy Council, the election was established to the exclusion of the Provost Waller, sent by the King, who, as a layman, had received a Dispensation from the Statutes on that point.

To the unwillingness of the Fellow in 1769 to sue for a Dispensation, as it appeared to him a direct violation of his oath, the new construction of the Statute respecting church preferment is due.

This oath likewise formed the sole defence of Magdalen College against the arbitrary power of King James; the members of which did not deny his Majesty's power to dispense with their Statutes, but their own ability to accept and use any Dispensation, as being under the superior obligation of their oath.

The difficulty arising from this oath was always felt and acknowledged by those, who wrote in defence of King James's measures, who lamented that Founders should insert such obligations, which only tended to perplex scrupulous consciences, and afford umbrages to such as are unwilling to yield to their superior's dispensations, to insist more earnestly and tenaciously upon this obligation.

If then the obligation can be pleaded against a compulsory act, surely it must be stronger in the present case, where the acceptance is voluntary on the part of the Fellow.

To the ignorance of the extent of the Dispensation the ready acquiescence of the greater part of the Fellows may be attributed; few have read the grant, but it has been acted upon as a matter of tradition rather than deliberation. Can the same excuse be hereafter alleged by future Fellows? Can they with a safe conscience continue to take this oath, knowing that they are about to use a Dispensation, which they specially bind themselves to God not to use?

As, therefore, the present Dispensation does not even notice or affect to repeal the admission oath, the obligation remains still in force upon the conscience of the person sworn, so that

he cannot possibly use the grant without a direct and voluntary violation of this solemn engagement.

And that he may not by any subterfuge or omission, or plea of custom, enjoy with impunity the fruit of his violation, the Founder has appointed a Visitor as guardian, under fixed and prescribed powers, of his Statutes, strictly forbidden himself to make, or to allow others to make, any alteration.

To the wisdom and judgement of this protector, the redress of this breach of the Statutes, by the Fellows of Eton, is humbly, but confidently submitted by the Fellows of King's College.

We must here observe that the above observations, for reasons best known to the author, were sent to the Visitor without a name; they might not, therefore, claim that attention, which we think they deserve.

The following is the decision of the Visitor upon this second Appeal:

On Monday the eighth day of April, in the year of our Lord One Thousand Eight Hundred and Sixteen, before the Right Reverend Father in God, GEORGE, by Divine permission, Lord Bishop of Lincoln, Visitor of King's College in the University of Cambridge, and of Eton College, and Interpreter of the Statutes of the said College, in the Deanry House, London, situate in Dean's Court, London:

A Business of a Second Appeal and Complaint, promoted and brought by the Provost and Scholars of King's College,

AGAINST

The Provost and Fellows of Eton College:

The Lord Bishop of Lincoln, Visitor of King's College, in the University of Cambridge, and of Eton College, declared that he had taken for his Assessors, the Right Honourable Sir William Grant, Knight, and the Right Honourable Sir William Scott, Knight, Doctor of Laws, and assured George Jenner to be his Actuary, and he then (by and with the advice of the said Assessors, as he declared,) dismissed the said second Appeal, and pronounced that the oath now taken by the Fellows of Eton College against obtaining, or using a Dispensation, is to be understood as applying to the Statutes of the said College, as the same stand modified by the Statute* of Queen Elizabeth, and is limited in the extent of its obligation thereby, and that this was implied by the decision given upon the former Appeal.

Which I attest,
GEORGE JENNER,
Notary Public,
Actuary Assured.

GEORGE LINCOLN.

(L. S.)

* Vid. Remarks on Williams's Report.—*Note by Edit.*

To the above documents we beg leave to subjoin the following observations upon Mr. Williams's report of the pleadings :—

Mr. Williams, who found it necessary to abridge the case, has filled two pages with an attempt to correct a mistake, as he terms it, into which both parties have fallen respecting the election of the Winchester Fellows from the actual Fellows of New College, which he denies to be on account of the Statute, or to have been a universal though a general practice. As, however, Archbishop Laud, an Oxonian, upon an appeal of King's College, 1635, states such to have been the invariable custom, and founded upon the Statute, and Wood, the Oxonian Antiquarian, asserts the same, if this practice had been departed from in a single instance of late date, and that under the peculiar circumstance of a father, who had resigned his Fellowship to make room for his son, being re-elected upon the premature death of that son, still the uninterrupted practice of upwards of four centuries will bear out the assertion of its universality as well as statutableness.

Mr. W. in the small portion of the work, which can be called his own, namely, the introduction, is far from accurate.

PAGE IX.]—Instead of *majority* it should have been *all* the Fellows.

Ibid.]—The appeal does not lay a *claim* to the Livings, but states that such a disposal would be agreeable to the Founder's intentions, and this is confirmed by Archbishop Laud's opinion.

PAGE XIV.]—The time called reasonable was not thought so by the Visitor, who, having waited eight months, called for an answer, and after repeated letters, compelled it to be given in at the end of ten months. The real history of the answer is as follows: Upon the appeal being received, the Provost of Eton at first doubted the power of the Visitor; this being over-ruled, every attempt was made to induce the appellants to withdraw it; these failing, time was requested

for examining records, &c. &c. The case was then entrusted to a Civilian, who drew up an answer, which, however, fell so short of the expectation of the Fellows of Eton, that it was rejected with acrimony; and, upon the pressing letter of the Visitor, Mr. (now Judge) Abbot was applied to, and drew up the answer as given in.

Ibid.]—The long sentence upon the cause of the appeal being carried into a public court, might have been spared, being totally groundless. The Visitor wrote officially to King's College, stating that, having read the appeal, answer, and reply, he was ready to give his decision, but that the Fellows of Eton had earnestly requested that they might be heard by Counsel, and as they were so materially interested, he had consented, and therefore he ordered King's College to provide themselves with a Civilian and common Lawyer.

Page xv.]—Mr. W.'s reasons for curtailing, and garbling the appeal, answer, and reply, are by no means satisfactory. The majority of those likely to be readers of his book, were those connected with the two Colleges, and as much contradiction had prevailed from ex parte representations, it was earnestly wished that the whole case should appear as delivered to the Visitor. Only some few pages more would have been required for this purpose. As a legal case, it cannot be of any value, as the dispensing power was not entered into with sufficient depth or research by the Counsel, and the Assessors (possibly as sitting in a Court of no authority, but certainly for reasons best known to themselves) declined the exposition of their sentiments.

In the Report many points of the appeal are omitted, which deserved notice, such as the case of Magdalen College, Oxford, and the injury sustained by King's College from the retention of their Livings by the Fellows of Eton, an injury so far admitted even by the Fellows themselves, that an offer was made that it should never be repeated if King's College would withdraw the appeal.

In the answer of the Fellows of Eton many points of equal importance are left out, but with this difference, that Mr.

Abbot, who drew up the case, introduced all his legal arguments into his speech before the Visitor: but the whole of the arguments upon the expediency of the breach of Statute are omitted, upon which the Fellows of Eton laid so great a stress that the reader would be tempted to cry out,

"Cura quid expediat prior est quàm quid sit honestum."

In the reply of King's College the omissions are more numerous, and as these omitted passages were direct answers to assertions made by the Fellows of Eton, they were important. Dates in many places are left out, and pages of reference to Statutes. But more particularly, in order to correspond with the omissions in the Eton answer, the whole reply to the expediency is passed over.

Mr. W. affirms that the substance of the pleadings is stated in the precise order, and language, in which they were exhibited. Did this assertion rest entirely upon Mr. W.'s accuracy, little credit could be attached to the Report, as the speeches were not taken in short-hand, but merely from notes. But Mr. W. took a more certain course, by submitting his Report to the respective pleaders, who thus, by correcting, and revising their own speeches, have stamped upon them an authenticity.

We take this opportunity of noticing an assertion made in the appeal, of the probability that the Dispensation was granted "ignoranter," which is declared improbable in the Eton answer. In Strype's Life of Archbishop Parker, (p. 315.) it is stated, that one Wood, a Fellow of All Souls' College, privately obtained a Dispensation from Queen Elizabeth, contrary to the oath he had taken not to sue for nor accept one. The Warden and Fellows refused to abide by this, and wrote to her Majesty, who referred the matter to the Archbishop. Although great interest was made in Wood's behalf, the Archbishop decided that he had "stepped into manifest perjury to sue for a Dispensation against the Founder's Statutes." This case is parallel with that of the Fellows of Eton, and with respect to those, who made suit to the Queen,

and accepted the Dispensation, must be liable to the same sentence.

Page 63.]—"This specious, and indirect reasoning," as it is truly called, is completely proved to be false by examining the case.* John Sever was Provost at the time of Clerc's election, and upon his resignation William Wayneflete, made Fellow one year after the dispensation to J. Clericus, was appointed by Henry VI. to be Provost. Upon his removal to the See of Winchester J. Clerc was made Provost, not however by the King but the Fellows, the King, although he had reserved to himself the right of appointment, having waved it in this instance.

Page 64.]—The case of Boswel is very extraordinary, unless there were two persons of that name. He appears to have held no less than three livings. And in the case of Piddle Hinton the College paid to the Vicar a pension of five marks per annum during the time Hopton held it, the value of the living being nine marks. Upon Hopton's resignation the same Vicar resumed it.

Page 71.]—A mistake is made in respect to the distance; it ought to have been, a benefice requiring by its admission oath continual residence.

Page 77.]—The Fellows of King's are mentioned in the statute of election, but there is no statute respecting the giving away preferments.

Page 92.]—Instead of King's College read Winchester.

Page 94.—Dr. Lushington commences with an objection ill timed, if true, as it ought to have been made upon the receipt of the appeal, not in a court, which was granted at the particular request of his clients; but it is in fact groundless. An appeal is not amongst majora negotia, as the Statute of Visitation shews, neither is any seal necessary. The framers of the Statutes were not guilty of such an absurdity. The seal can be used only by the consent, and in the presence of the Provost; and what

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* Vid. Eton Answer, page 26, 27.

Provost would seal an appeal against himself, or any act or person, which he chose to support. Dr. Lushington also reasons as if the appeal was the act of individuals, when the reply fully proved the contrary. At the same time it may be asserted that individuals are allowed by the Statutes to appeal without the concurrence of the whole body.

Page 95.]—The Fellows of King's did not lay claim to the livings as a *statutable right*, but stated that such a disposition would best accord with the Founder's *intentions*.

Page 96.]—Archbishop Laud's powers were derived from the Statutes, not from Charles I. He was both Ordinary and Metropolitical Visitor; the See of Lincoln being at that time seised by him upon the deprivation of Bishop Williams. Thus his visitation did not proceed from the prerogative of the crown.

Page 97.]—A discretion in the choice is perfectly reconcileable with a priority of right in the parties eligible. The discretion is given as to the *personal* qualification of the candidates, and if no one is found qualified in the first class, the electors may proceed to the other classes in order, but still the first class retains it's priority as to future elections.

Ibid.]—Archbishop Laud's determination was an infringement. He declared that the Statutes ordered the election in the first instance to be made from actual Fellows of King's, and then, because the practice had been contrary, decreed that five should be elected from actual and former Fellows of Kings, thus acting in direct violation of the Statutes, which forbid custom to sanction any deviation.

Ibid.]—The terms of the Winchester Statute are no more imperative as to election of actual Fellows of New College, than those of Eton, as to the election of Fellows of Kings. Those who are, and those who have been Fellows, are placed in the same order and words.—Vid. page 56 of the Report.

Page 98.]—The times which succeeded the dethronement of the Founder, were times of great confusion; the College was all but destroyed, and the number of Fellows reduced to four.

Ibid.]—King's College will be perfectly satisfied if the expressed conditions of the Statutes be complied with.

PAGE 100.]—"Pensio annua," and "singulis annis" are not equivalent. Pensio annua not only includes the sum paid yearly, but a continued annual payment; singulis annis one confined to the duration of each year. Singuli is always used in the Statutes in a restrictive sense, whether applied to time, person, or place. The Vice-Provost is to be elected singulis annis, thus guarding against a longer continuance in office, the boys are to lodge three in a room, the Fellows singuli singulis cameris.—The usage of the word in a restrictive sense in the passage referred to, might be shewn, was it worth while to enter more fully into a contest now decided upon.

PAGE 102.]—Three instances are allowed by the Fellows of Eton,—Clerc, Francis, and Horman.

PAGE 104.]—The 25th of Henry VIII. declares the power of dispensing to be in the King, *and Parliament*, and that *they* have the power of authorising persons to dispense, and in the act intituled "concerning Peter Pence, and Dispensations" in the 20th section a power is granted to the King to appoint a commission under the great seal, to visit Monasteries, Colleges, &c. In the case of Colt and Glover, it was Lord Hobart alone who made this assertion, and it is noticed as being the first time it ever was made. The subjoined case of Armiger *v.* Holland is an ecclesiastical case, and had no reference to Colleges. Neither of these cases bear upon the question.

PAGE 106.]—Lord Coke's accuracy on this point has been questioned, or rather disproved.

PAGE 107.]—From the jarring claims of Bishops, Popes, &c. no rule of right can be drawn. The Papal interference is allowed to have been an usurpation.

The Statutes stated to have been dispensed with at Oxford, A. D. 1575, were bye laws, which were not universally agreed to, and caused great contests. As a reference to Parliament is mentioned on this very point, it is impossible now to ascertain what the King did of himself, and how far Parliament acted. These cases should not have been brought forward, as they are not instances of pure prerogative, but mixed with Parliamentary interference.

Ibid.]—In Rushworth's Collections referred to, it will be found that Archbishop Laud claimed a power of visiting the two Universities, in respect to their observance of the liturgy and discipline of the established church, but disclaims any intention of attempting to intermeddle with the statutes of the different colleges.

Page 108.]—Arundel dispensed with the oath, and Statutes of Trinity Hall, merely in allowing more commons to the Fellows, the Statutable allowance being insufficient according to the change of times. Lord Coke made the same allowance in respect to a Hospital, saying that it must have been the intention of the Founder, that a sufficiency of commons should be allowed.

Ibid.]—What is here attributed to Henry IV. is by others to the Black Parliament. The words of Fuller are these, (after reciting the decree of the King in Latin) "afterwards the King confirmed the same with the consent of the Lords and Commons in Parliament, as in the Tower Rowles doth plainly appear."

Ibid.]—Seventeen ought to be 27, a very important anachronism, as the *act empowering* the King to visit Colleges passed in the 25th year of his reign.*

Page 109.]—Jus Regium is not here to be understood as an act of prerogative, but a commission authorized by an act of Parliament. In a commission from Henry VIII. to Dr. Parker, and others, to visit Cambridge, are these words: "whereas our most loving and obedient subjects in this our last session of Parliament, have given, and granted to us full power and authority to order, alter, and reform all Colleges," &c. &c. Under this authority Henry could claim submission from all Colleges. The Commission of Dr. Leigh referred to Papal ceremonies and abuses of Statutes.

The implicit obedience of King's College is very probable, but is nowhere mentioned.

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* This anachronism belongs to the Pleader, not the Reporter.

In the reign of Mary, the College refused to submit to a visitation by Cardinal Pool, without the proviso that they should do nothing contrary to their Statutes.

Ibid.]—Edward the Sixth appointed eight Commissioners as he was empowered to do by Act of Parliament of the 25th of Henry the Eighth.

Page 110.]—Peter House had no Statutes from Hugo de Balsham, its Founder. Montacute the seventh Bishop of Ely gave them, and as nothing regular had passed, Edward the Sixth's Commissioners arranged and formed the present code. —Vid. King *v.* Ely,—*Dunford and Earl's Reports.*

No Statutes were given to St. John's by their Foundress; a second foundation took place by a commission of Henry the Eighth, and the Bishop of Ely was appointed Visitor, and called Secondary Founder.

New Statutes were added by Queen Elizabeth; but the right of Bishop Fisher to give Statutes has been doubted.—*Burrow's Reports*

The oath is not so strict, not a word is mentioned respecting dispensations.

The new Statutes of Eton were never forthcoming.

Sir Thomas Smith's Dispensation was granted by Edward the Sixth, and annulled by Queen Mary.

Page 111.]—That Henry the Eighth did not conceive he was entitled to exercise such a power previous to the 26th year of his reign, is evident from the preamble to the commission granted by him to Dr. Parker, above quoted.

Ibid.]—That no Act of Parliament was passed authorising the alteration of College Statutes is very true; neither do we know of any dispensation granted for that purpose, nor is any one here quoted. The Roman Catholic Religion was abolished by the oath of supremacy, which each member was compelled to take, and the use of the Liturgy, which was enjoined to be read in all chapels; and it is rather to be lamented, that the Act made no mention of this superseding power in respect to the Statutes of Colleges. The Colleges of the new Foundation, as they are called, or those founded after the Reformation, of

course have Statutes framed according with the Protestant ceremonies, but all those previous are obliged to act in direct violation of their statutes.

PAGE 112.]—Can any act of Charles the First be cited, as promoting the reformation?

PAGE 113.]—"Flower of the Prerogative," a truly precious flower transplanted from the Papal Hot-bed, which, having shed its baneful influence for several centuries over the rights of the subjects, at length destroyed the King, its owner!

PAGE 114.]—The great men at the Revolution did not, however, throw their sanction over the advisers of James the Second, in the dispensing power, as all the Judges, who gave their opinion that it was legal, were excepted from the bill of indemnity. The Bill of Rights likewise only professes not to invalidate such grants, &c. which could be *legally* made, not to authorise *illegal* ones—such as Elizabeth's Dispensation.

Ibid.]—Magdalen College did not resist the election of a President by interference of the Crown, "as attacking the religion of the nation," but as being contrary to their Statutes, and refused a dispensation.

PAGE 115.]—The statement here is not so correct as that set forth in the Appeal. Henry the Eighth endowed several Colleges, and granted that they should be ruled by Statutes specified in the indentures, which were given, but not indented. and therefore null. And the authority for making these being reserved to Henry, and not to his heirs, Queen Mary, by virtue of an Act of Parliament, had power granted to her to give Statutes to the said Colleges, and alter them at pleasure. The same power was granted to Elizabeth in a new Act, an. 1mo. 22; and again, 35 Eliz. 3d sect. "all Letters Patent of Henry the Eighth, made in the 27th year of his reign, shall be good, &c." Edward the Sixth had no Act for this purpose.

PAGE 116.]—The inherent power of the Crown to visit, and alter, and dispense with statutes is here asserted, but no attempts to prove its legitimate authority are produced: this assertion is totally overthrown by what has been before stated respecting Henry the Eighth.

The learned Civilian forgets that he has not given the origin of the assumed dispensing power. We have that still to seek. He has indeed attempted to confound the Jus Ecclesiasticum and this together, but the weakness of such attempt must strike every one who reads Mr. Warren's Speech.

PAGE 117.]—The case here supposed, is an extreme one; as previous to such a devolution, the Bishop of Lincoln, the Archbishop of Canterbury, and their two Chapters must be removed. A. D. 1595, Eton College presented their new Provost to the Chapter of Canterbury, the two Sees being vacant.

The Dispensation with mala prohibita, and not with mala per se, was a distinction introduced by Lord Coke, and as Judge Vaughan says, has more tended to perplex than clear up the question.

PAGE 118.]—As the Kings are the heirs and successors mentioned in the prohibition, there can be no doubt that it included them.

PAGE 120.]—The meaning of "non commodè observari" is put beyond doubt by the preceding words: "whereas, on account of the falling off of lands, and rents, &c. as well through dangers and losses, all these Statutes cannot *commodè observari.*"—*Eton Stat.*

Had the Dispensation been a compulsatory, or a privatory act, it might have been pleaded as preventing the observance of the Statutes; but on the contrary, it is a cumulatory indulgence granted at the request of the Fellows themselves. Neither can the loss of property be pleaded, as the means of indemnification resorted to have more than compensated for the property taken, as far as the Fellows are concerned.

The word commodè has been a favourite at Eton. Some years since, a Fellow of Eton wished to take more livings than agreed upon by the then Fellows, and quoted in defence, "si commodè haberi possit," from which he was afterwards called Dr. Commodè.

PAGE 121.]—The Colleges of Cambridge and Oxford have no reason to fear; Statutes, which were given by commissioners

legally appointed, would have sufficient authority, and no alteration has taken place but with those Colleges, which had not a regular body of Statutes.

PAGE 122.]—Not *this dispensation*, but the private one to J. Chambers. King's College knew nothing of these transactions. There was no copy of the Eton Statutes in their library for at least a century about that time, as was proved at a visitation in 1600 by Provost Goade.

PAGE 123.]—The mode of proceeding with respect to the election of a Provost, was, by a recommendation to the College from the King. No dispensation was ever issued.

PAGE 124.]—Where, in the appeal or reply, is any attempt made "to mark a distinction between the acts of a whole body, and the acts of individual Fellows"?

PAGE 125.]—Can the Fellows of Eton plead usage against their oath, by which *consuetudo* &c. are forbidden to be impleaded?

PAGE 126.]—The living relations of Dr. Sleech know, that he had a dispensation; and Mr. Southernwood, who lived near that time, asserts it in his letter as a matter of personal knowledge. Dr. Cook never had one, and the remark in the letter is a hit at him for holding preferment without it.

PAGE 127.]—It was not asserted, that more than one case of re-election had taken place, but the spirit of this construction is acted upon whenever a beneficed person is elected a Fellow, and takes another living afterwards, the first by the misconstruction of the Statute, the second by the Dispensation.

Upon the not declaring vacancies, the less said the better.

PAGE 127.]—If all the ordinances in the 38th Statute of King's College can only apply to events after becoming Scholar or Fellow; suppose a Scholar of Eton (and some remain until 20 years of age,) should marry, can he plead the future construction in his favour, and demand admission at King's, having been duly elected? or should his marriage be concealed until admitted, can he shelter himself under this construction from expulsion? He certainly may, *as well as* the Fellows of

Eton; as he does not swear at his admission that he is not married, and marriage is not stated as an obstacle to his election.

Page 129.]—The argument is plausible taking marriage as an abstract question opposed to celibacy. But will it appear so considered in respect to the rest of the Society?

The constitution of the College was monastic. Can any class of its members change at will their condition without trenching upon the rights, and properties of the others? In order to render marriage even not hurtful, a new constitution ought to have been framed, setting forth the due proportion of stipened, commons, and lodging to each class, reference being had to the Statutes, and not leaving to interested persons an unqualified, arbitrary management of the whole. That no advantage has arisen to the College from the marriage of the Fellows or Masters, may easily be proved.

Page 130.]—It will be necessary to shew that the great men here referred to, ever read the Statutes of Eton College. In the reign of Elizabeth, the Fellows tell the Visitor they doubt his having read them; and as no Visitation was held by any one of those mentioned, it is not very probable. But even if they had read them, it proves nothing; as they did not obey the injunctions of the Statutes in other respects, why should they particularly notice this one violation?

The above speech has been highly extolled, and gained the learned Civilian much applause; with what justice, let the unprejudiced reader judge for himself.

The merit of having made the best defence of which his case was capable, we are willing to allow him; more we cannot. Is any extraordinary acuteness of reasoning, are any particular traits of eloquence exhibited therein?

It is not less wisdom in a pleader than in a general, to assume in a desperate case, such an attitude as the French call *imposante*, and never was this more necessary than on the present occasion, or better executed. For conscious of the ignorance of the audience, on every point of the case, of the Counsel opposed to him on all those unconnected with law, the Doctor boldly

quoted, or rather misquoted, the Eton and King's College Statutes, travelled into the dark ages in search of Papal authorities, cited books now obsolete, such as Fuller's History of the Church, and Cambridge, and some, of which he knew not even the Title, as he calls Wood's Historia et Antiquitates Oxonienses, his Athenæ Oxonienses, books differing from each other even in language, the one being in Latin, the other in English. Moreover he not only hurls defiance, but loudly declares himself impregnable. If, however, the Jus Ecclesiasticum be considered as irrelevant to a question respecting lay corporations, his assertions proved groundless, his dates false, his quotations garbled and defective, as many have been, and almost the whole might be included in one general denial, his vaunted impregnability must be at an end, as the remainder of his works may be carried with the slightest assault.

The applause bestowed on this speech, may be attributed to the same cause, operating very differently on two kinds of hearers, the audience, and Judges, not to its own intrinsic merits.

An audience incapable of detecting misrepresentations of subjects totally unknown to them, gave credit to assertions thrown out with such appearance of truth, and enforced with all the studied arts of declamation.

Whilst the Judges listened with more than complacency to a speaker, who rendered plausible sentiments according with the decision which they had already determined upon. But if either the learned Doctor or his friends flatter themselves that his speech contributed in the slightest degree to promote the decree, they are grossly deceived. The case was determined before the hearing, and however the Judges might be pleased at seeing the audience swallowing with admiration the varnished statements, they were too deeply read in the laws, and too much masters of the real cause, to pay any attention to arguments of which they knew the true value.

But to proceed with the Report—

Page 133-4.]—"The latter term" &c. The learned Advocate here reasons upon wrong grounds; the doubt is respect-

ing "Beneficium Ecclesiasticum in one sentence, and "Beneficium" in the following, whether they mean the same—vid. reply.

Ibid.]—The same error as above noticed prevails in this passage about singulis annis: the assertion that the verbs in the 25th Statute are future, and not so in the 23d. is a very extraordinary one; in the 23d. the verbs are habuerit, obtinuerit, in the 25th. adeptus fuerit, assecutus fuerit, and in the Statute of King's College referred to, the very words are joined habuerit et assecutus fuerit. But the truth is all these tenses being in the subjunctive mood, have necessarily a future signification, although they represent the present, past, and future tenses. Beneficium quamvis litigiosum existat K. C. Stat. quamvis litigiosum fuerit. Et. Stat. In the dispensation of John Clerc the matter is put beyond doubt by an additional word, "Beneficium quod *prius* habuerit."

Page 135.]—"Eton College is a Royal Foundation, &c." If it be true that a King never could grant away in perpetuity possessions belonging to him, but that his successors might reclaim them, in what a situation those bodies corporate, and individuals must be, who have been entirely endowed with property arising from lands, &c. fallen to the crown by the suppression of monasteries, &c. since all these stand in the same situation as the Colleges of Henry VI. Eton was endowed with estates, part of which came to the founder from suppressed alien Priories, and part from the Dutchy of Lancaster. Moreover, the grant of them was regularly ratified by an Act of Parliament under the denomination of a charter enumerating and describing each estate. Edward IV. after the dethronement of Henry, although he called him King de facto not de jure, did not seise any of this property jure coronæ, but obtained an act of resumption, legally entitling him to take such estates as were not excepted in the act. Similar acts had been obtained by preceding Kings, and even by Henry himself, for the same purpose. Neither did Edward, when he wished to destroy Eton College, do so jure coronæ, but applied to the Pope for a Bull revoking the oaths, which he conceived a complete

obstacle to his attempts; neither in his letter to the Pope, does he call it our College, but a College at Eton. In some old writings of King's College, it is mentioned that Edward left untouched, even by the act, the property of the Dutchy of Lancaster, which he conceived Henry entitled to as Duke.

Page 136.]—The case of Peter-House has been before described, and is not analogous.

Ibid.]—The difference between what was done by Laud, and the Queen, was this; Laud acted as Visitor statutably; the Queen interfered in opposition to the Statutes. The letters patent were for enforcing obedience to the Visitor's decree.

The decree transmitted to the two Colleges, after a deliberation of so many months, and at so heavy an expence, deserves particular consideration. Its extreme brevity is one of its most remarkable features.—All former Visitors, upon appeals from the Colleges of Henry VI. had given at full length the grounds, upon which their decisions were founded. The present Visitor had been accustomed to act in a similar manner, and shewn great knowledge of the Statutes, and even when an extraordinary appeal was determined at his house, after a hearing of Counsel, his Assessor (Sir J. Macdonald) in giving judgment, set forth at full length the reasons of his decision: why then, it may be asked, was not the same mode pursued in the present case? The matter was sufficiently notorious, and had attracted much public attention; why disappoint all parties by declining to give sentence in public, and by so concise a decree? That the Visitor intended to have pursued his usual mode of giving his decision at full length, is beyond all doubt, but one of the Assessors makes no secret of declaring that he prevented the Visitor from such intention, and sent down the decree to Bugden ready drawn up, which was signed by him, and transmitted to the two Colleges.—"Give no reason, your dicision is final, they must acquiesce in your opinion, be it right or wrong."

Hoc volo sic jubeo stat pro ratione voluntas.

Its obscurity and deficiency next call for observation.—The decree is divided into two parts; the one establishing the dispensation, the other deciding against the construction of the 25th Statute, as set up and acted upon by the Fellows of Eton. In respect to the Dispensation, it is stated nudis verbis, "The Fellows are enabled by the Dispensing Statute of Queen Elizabeth, to hold one Benefice." No comment is added, no mention made of a strict observance of the terms therein contained, as to the value of the living, 40 marks, (26*l.* 13*s.* 4*d.*) or that a Canonry or Prebend are not Benefices allowed, but a Rectory or Vicarage. But what requires particular notice, the words *dispensing statute*, are substituted for Dispensation. Upon this we shall remark hereafter.

The second part of the decree, which is intended to be prohibitory of the practice of taking more livings than one, is couched in such terms, that no indifferent person can guess that a violation of Statute has been for some years in existence, and if so, whether the present Fellows are not permitted to go on in this abuse, as well as enjoy the fruits of the violation already possessed by them. Such appears the ambiguity of the terms 'future Fellows,' instead of 'all Fellows' for the future.

To the decree in general an objection will lie, as assuming a power beyond the Statutes. This might have been avoided by a decree still more concise, (if brevity alone was the object) and at the same time intelligible and statutable, as thus: "The Fellows of Eton are prohibited by their Statutes, from retaining their Fellowships with Ecclesiastical preferment, but are permitted to hold one Living by a Dispensation from Queen Elizabeth, provided, however, that such Dispensation be valid, but its validity must be established in a competent court; as nothing beyond the Statutes is within the Visitor's jurisdiction."

By such a decision, the Visitor would have exercised his statutable authority to the utmost; whereas at present, he has decided upon a point beyond his power. An Act of Parliament may certainly restrain a strict execution of the Statutes, but over this he has no controul. Neither can he remove a Fellow for not obeying the act. The carrying this into effect depends

upon powers contained in the act itself, appointing certain persons to superintend its observance. In the reign of Queen Elizabeth, Dr. Baker, Provost of K. C. was discovered to be a Roman Catholic.

Upon complaint of this, a visitation was held in the College. —The Visitor, however, did not remove him. The Queen, not satisfied with this, ordered the Commissioners appointed under the great seal, to visit the College.

The Provost did not await their arrival, but fled the country. To what can the Visitor's conduct upon this occasion be attributed, but the limitation of his powers by the Statutes, which enjoin the sole exercise of the Roman Catholic Religion; and the enforcement of the Act of Parliament being beyond his authority? This was under the eye of a most jealous and arbitrary Sovereign, and yet no charge is mentioned as brought against the Visitor for failing in his duty; but the deficiency in his power, was supplied and remedied by a special authority.

A serious objection will also lie against the mode of trial, as unstatutable, and defective.

The Statutes permit the Fellows, as a body, to consult Counsel, if attacked as to their property or their rights, but not in case of an appeal before their Visitor; in fact, all cases of which he can take cognizance, being within the Statutes, have nothing to do with the laws of the Realm, and require no legal expounder. But what renders the application to Counsel a very nice point, is, a most peremptory declaration in the Statutes, that if any member, either himself or by other persons, attempts to affix a construction or interpretation contrary to the real meaning, or such as he believes to be so, he shall be deemed guilty of perjury, and expelled.

On the part of the Founder this was intentional, "ad evitandum pericula, quæ circa Statuta nostra ab ingeniis hominum nimis subtiliter, et minus utiliter sentientium possint evenire." —This clause puts an end to the ingenuity of Council, and prevents the twisting and torturing the meaning of a passage. But in addition to its unstatutableness, the mode is in itself insufficient, the subject being totally new to the Counsellor, he

is compelled to follow implicitly the contents of his brief, be they true or false; no examination of witnesses takes place, no certifying of records; each party makes his case as plausible as he can. Such a mode of trial is unheard of in any other court, and would be rejected as incompetent to obtain the truth.

If it be determined that the Visitor need not go down to Eton to adjudge the matter, it ought, at least, to be carried on and committed to writing, as the parties could then reply; and by demanding proofs of every thing advanced, render the Visitor capable of deciding, according to what appears the truth.

It may be asserted, that in the present instance the Visitor had taken all these previous steps, if so, we ask what need of hearing the matter repeated, vivâ voce? If he was, by means of written documents, perfect master of the subject, (and, as no new arguments were brought forward, he certainly was so,) the whole proceeding was unnecessary and superfluous. The entertainment of the audience was not the object of the hearing, but the information of the Judges. And as not a single new fact was produced, it cannot be supposed that such persons as the assessors, who, after a due examination of the matter, had declared their mind made up, and their readiness to determine, could have their opinions changed by the comments of pleaders, upon the same grounds of evidence.

To what then, can be attributed the application of Eton for such a hearing, but the hopes that many assertions, unfounded and unwarranted, thrown out in a long speech, might make an impression on the audience, and remain unnoticed and unanswered by their opponents, which, if committed to writing and deliberate examination, must be detected and refuted?

As the decision rests solely upon the dispensing power of the Crown, a short account of its origin, progress, and fall, appears necessary. The dispensing power owes its introduction into this kingdom to the Pope. Dispensations, which originally were relaxations, by Bishops, from church discipline,

" ibi dispensatio ubi rigor est periculosus," were, by degrees, assumed by the Popes, and claimed as a prerogative of the Roman See. In the first ages they were unknown, and Pope Innocent, about the beginning of the 13th century, introduced them, asserting, " Papa dispensare potest de omnibus præceptis veteris, et novi Testamenti, etiam contra jus Divinum et Apostolicum." These Dispensations were exclaimed against by all the Kings and Princes of that time, which shews that they were not ancient. The first non obstante publicly noticed, and opposed in England, was that of Pope Gregory the Tenth, in the 24th year of King Henry the Third, A. D. 1240.— This was the revocation of a grant of former Popes to the Cistercian order; " Indulgentiâ eidem ordini concessâ non bstante." In 1245, complaints were sent by the King, Nobles, and University of England, against the non obstantes. Henry laid before his Parliament the grievances sustained from the Pope; the 5th ran thus:—" Item gravatur regnum Angliæ ex multiplici adventu illius infamis nuncii (non obstante) per quem juramenti religio consuetudinis antiquæ, scripturarum vigor, jura et privilegia debilitantur, et evanescunt." The writers of that age, though Monks, always term it " detestabilis adjectio (non obstante.)"

Henry the Third, although at first he opposed these Dispensations, at last began to imitate them, revoking and contradicting his former patents; being reproved for this, he justified himself by the Pope's example: " Nonne Papa facit similiter subjungens in literis suis manifestè non obstante aliquo privilegio vel indulgentâ." (M. Paris.) Upon the production of one of these in the court, Roger Thurkeby, Justice of the Common Pleas, " ab alto ducens suspiria, dixit, eheu hos *ut quid** dies expectavimus, Ecce jam civilis curia exemplo Ecclesiasticæ coinquinatur, et a sulphureo fonte rivulus intoxicatur."— This shews the time when the use of them was introduced into

* Copied literally from Matthew Paris's Hist. Angliæ.

England, in civil and temporal causes; not before the reign of Henry the Third, An. 1252. The same King, revoking a grant to the Templars, quoted in defence the example of the Pope: "Cui Magister Hospitalis respondit," quid est quod dicis Domine Rex? absit ut in ore tuo recitetur hoc verbum illepidum, et absurdum. Quam diu justitiam observes Rex esse poteris, et quam cito infregeris Rex esse desines.—15 Rich. II. Upon the bill of provisors, the Commons assent, that without prejudice to the rights of those in possession by Statute, by the advice and consent of the Lords, the King might dispense with the said Statute until the next Parliament. And they reserve to themselves the liberty of disagreeing next Parliament, and they conclude with observing, this was a novelty not practised before, and ought not to be drawn into an example and precedent for the future, and desire this may be entered upon the Rolls of Parliament.—16 Rich. II. Upon laying this Act again before the Commons, they grant, that the King should have such power to moderate it, as he should with his Council judge expedient, but so that it all be laid before the next Parliament, that they might upon good advice agree to it. —17 Rich. II. Tydeman was made a Bishop by the Pope's provision, but the King did not dispense with the Statutes, but left it to Parliament, and the Dispensation was passed by the King, Lords, and Commons.—20 Rich. II. The Commons in Parliament do again agree, that the King, with his Council, may dispense with the Statute of Provisors, but so that it be examined next Parliament.—1 Hen. IV. The Commons assent, that the King shall have the same power of dispensing with the Statute as his predecessor.—2 Hen. IV. The Commons declared, that the dispensation should not extend to Cardinals, or strangers.—25 Hen. VIII. An Act was passed destroying the usurped power of the Pope; the preamble runs thus:—It standeth with natural equity, and good reason, that all and every such laws made within this realm, or induced by the said sufferance, consent and custom, your Royal Majesty, and your Lords, spiritual and temporal, and the Commons, representing the whole state of this realm, in this your most high Court of

Parliament, have full power, not only to dispense, but also to authorise some elect persons to dispense with those and all other human laws.

Charles II. 1675. Upon the King's Declaration of indulgence to Dissenters, the Commons state: "That Penal Statutes in matters Ecclesiastical, cannot be suspended but by Act of Parliament." The King replied, "He is troubled that his declaration should give occasion to the questioning his power in Ecclesiastical matters, which he finds not done in the reigns of any of his predecessors: He doth not pretend to suspend any laws wherein the properties, rights, or liberties of his subjects are concerned." The Commons reply, that "your Majesty has been misinformed; no such power has been claimed or exercised by your predecessors: and if it should be admitted, might tend to interrupt the free course of laws, and alter the legislative power, which has always been acknowledged to reside in your Majesty, and the two Houses of Parliament."—William and Mary, 1689. Upon passing a bill of indemnity, the Judges were examined who had given advice to King James on the dispensing power, and it was determined that the asserting, advising, and promoting the dispensing power, and suspending laws without consent of Parliament, as it had lately been exercised, and the acting in pursuance of such pretended dispensing power, is one of the crimes for which some persons may be justly excepted out of the bill of indemnity. Several Judges were examined, and it was voted, that Sir E. Herbert, Sir Francis Wythers, Sir Richard Holloway, Sir Robert Wright, the Earl of Sunderland, the Earl of Huntingdon, and the Bishop of Chester, be excepted.*

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* Sir Edward Herbert in his Vindication declared, that he "utterly denied the Dispensation of the King to Magdalen College, to be of any force at all, because there was a particular right and interest vested in the Members of the College, of choosing their own Head."—*Sir Edward Herbert's Vindication, &c.*

Bill of Rights, 12 Sect. "And be it further declared, and enacted by the authority aforesaid, that from, and after the present session of Parliament, no dispensation by non obstante of any statute or any part thereof shall be allowed but that the same shall be held void, and of no effect, except a dispensation be allowed of in such statute, and except in such cases as shall be specially provided for by one or more bill or bills to be passed during this present session of Parliament.

The opinions of the Judges upon this dispensing power have been various, frequently in its favour, but often contradictory. The grounds, upon which the twelve Judges decided that Henry VII. could dispense with a Sheriff continuing in office above a year contrary to the act of Henry VI. 23, which barred a non obstante in this case, are not precisely known. It is conceived by some that they were influenced by fear of a King who claimed his title by conquest. In the case of Thomas and Sonell this case was fully entered upon. It was however stated that although the King could dispense, yet in certain instances the person might be disabled from accepting the dispensation, by having taken a previous oath against such acceptance. The case of Sir Edward Hales was well known to be a pretext set up for bringing forward the dispensing power. For particulars, vid. Parl. Reg. of Wm. and Mary.

In the case of the Bishops this power was canvassed most freely, and the arguments against it remained unanswered.

It must, however, be remarked, that as the Judges before the Revolution were removeable at the King's pleasure (and some of them were actually struck off for not assenting to the dispensing power) their opinion loses all its value. But even by the Judges, who were the greatest sticklers for the King's prerogative, a difference has been allowed between public, and private dispensations, for it has always been admitted that laws, the breach of which are to particular men's damage, cannot be dispensed with. And even the Chief Justice Herbert owns that the King cannot dispense with laws, which vest the least right or property in any of his subjects. "There the Prerogative ends, where the interest of individuals is concerned,

and a distinction to be made. *Bonum publicum*, the laws of this may be dispensed with, *Bonum singulorum populi*, and with the laws concerning that the King can not dispense." After the Parliamentary declaration of the illegality of the dispensing power as heretofore exercised by the Crown, and the punishment of the King's legal advisers, it was scarcely to be expected that any professional man in either branch of the Law could have been found to advocate its legality, or any Court, however constituted, which would have even tolerated, much less approved, such a defence. Such however was the case; but to the honour of the Common Law, none of that branch of the profession would either write or utter a syllable in its support, and it rested with the Civilian to repeat all those arguments, which, issuing from the venal and prostituted pens of Lord Herbert, and others, were made public under the imprimatur of Sunderland; arguments, in the attempt to enforce which James II. lost his throne, and the writers were forced to fly into exile. These arguments were now listened to with satisfaction, and drew forth the compliment that by this speech the Civilian had put himself at the head of his Court. But it may be replied that these arguments, although advanced with such apparent earnestness, were not the real opinion of the advocate, but the best possible for the cause of his clients. Of this we cannot judge. But the contrast on this very point, between the advocates of the Civil and Common Law, forms a very striking difference. Mr. Abbot, whose competency to judge how far a Counsellor may proceed in defence of a client must be allowed, would neither in the answer of Eton College, written by him, or in pleading, make use of any defence unconstitutional.

From the above statement it appears that the dispensing power had not a legal origin, there being no record, or even mention made of its exercise before the latter part of the reign of Henry III. and then assumed by him, not under the claim of an ancient prerogative, but as an imitation of the Papal authority.

That the only Act of Parliament which recognizes a dispensing power, declares such to be in the *King, Lords, and*

Commons collectively, and not in the *Crown solely*, and farther enacts, that a dispensation, in order to be valid, must be granted in the form contained in that act, and not otherwise.

That the dispensations intended by that act did not relate to the suspending laws or statutes, or in any wise concern private property, but moral and religious rites, ceremonies, and duties.

It may therefore be asserted, that the dispensation of Queen Elizabeth, not being within the meaning of the aforesaid Act of Parliament, nor even granted in the form prescribed, viz. by the Lord Chancellor, and Archbishop of Canterbury, is, by virtue of the said act, null and void, and that the prohibition on the Eton Statutes drawn up, and inserted by the lawyers of Henry VI., amongst whom the eminent Fortescue was one, was at that time deemed a legal and sufficient bar and fence against any attempts of succeeding Kings to dispense with those statutes, and must still remain in the same force, unless superseded by an Act of Parliament.

The dispensation, viewed in another light, will require consideration. Mr. Abbot, unwilling to defend the dispensation by the doctrine of such power being lodged in the Crown, wished to support its legitimacy by presuming in its support an act of parliament empowering the Queen to make such a grant.

In weighing the credit due to this argument, an enquiry is necessarily instituted into the conduct of the succeeding Sovereigns on this point, and when in the course of investigation it appears that not only down to the Revolution, but even since its absolute prohibition by the Bill of Rights, the dispensing power has been exercised: that it ceased at Eton in 1769, not from a refusal on the part of the Crown to grant, but of the Fellows to apply for such an indulgence, (a more easy, cheap, and extensive mode of evasion being adopted;) that in other *Collegiate* bodies the same power still gives relief from their statutes and oaths even at the present time, and as no Act of Parliament has been, or is pleaded authorising such exertion of

power, the mind is compelled to reject the plea offered by Mr. Abbot in defence of the grant, but at the same time it fancies that the reason for the brevity, as well as the novelty of the term used in the decree may be discovered.

May it not have been the aim of the framer of the decree (we do not mean the Visitor) to avoid as much as possible all discussion about the power of the Crown upon this point? And what means more likely to avoid this than by a variation of the terms. To this may be attributed the change of the word dispensation, the word used by the Queen herself, into the term *dispensing statute* in the first decree, and in the second the *statute* of Queen Elizabeth, a term directly opposed to a dispensation. Can it be supposed that this alteration took place without design? The meaning of the word *dispensation* every person comprehends, but a *dispensing statute* conveys a double meaning, and when, in the second decree, the word *statute* alone is employed, the mind of the reader is totally led away from considering the instrument as a dispensation, but as a regular statute. Many circumstances tend to confirm this opinion; the real case is known to few, whereas the decree has been studiously inserted in all the newspapers; hence most of those who have heard of the dispensation, seeing a different term used by authority, will conceive that no dispensation has been, as reported, granted, but a real statute, authorising the conduct of the Fellows of Eton.

If this conjecture be wrong, the blame rests with those, who not only declined a public declaration of the judgement in court, but even prevented the Visitor from stating in writing the reasons upon which his decision was grounded. A sudden deviation from a long accustomed mode of procedure requires explanation, and a suspicion arises that all is not right, where a concealment of the motives is obviously intended.—At least it may be inferred that a conviction of the illegality of the grant could alone cause the necessity of thus changing the terms, and strongly must it argue in favour of the appellants, when it was found necessary to suit the words of the authorising power to

the decree, instead of the decree to the words of the authorising power. To what shifts have they had recourse!

The Fellows of Eton plead a dispensation, and the Queen declares she dispenses, and calls the instrument a dispensation. But what say the Judges? The parties are mistaken, it is a dispensing statute, or, rather, a statute. Had then the Queen a legislative power, a power to give or alter statutes at her will and pleasure, without complying with the forms of the Act of Parliament? We reply in the words of the Parliament to Charles II. You are misinformed: no such power has been claimed or exercised by her Majesty.

The cases quoted by Dr. Lushington were those of the colleges of St. John's, and Peter-house, which had no statutes left by their founders, and even these were visited by commissioners appointed under the great seal, and deriving their power from an Act of Parliament. In order to give a plausibility to the word statute, a reference ought to have been made to the new statutes mentioned by Archbishop Parker.

But as no such statutes have ever been heard of, and moreover if they had repealed the 25th statute, as there would have been no reason for a dispensation four years after, on this ground no argument can be raised. Had the matter been referred to the Archbishop, he would probably have given the same opinion as in the case of All Souls' College, since the parties were in the same predicament.

The grounds of the judgement the more they are examined the less tenable do they appear, and the cause of avoiding the publicity of giving sentence in court admits of an easy explanation, as well as the advice "give no reasons."

The Appellants, however, have no reason to repent of their attempt to restore to their successors their statutable rights, although they may regret that their efforts have been rendered fruitless.

They have proved that ecclesiastical preferment is untenable by statute, or by dispensation, the Crown being unable legally to make such a grant, or the Fellows to accept it under their oath. How then have they lost their cause? On this point,

where a total silence as to the grounds of the decree is kept, credit must be given to report. They have lost it because it was deemed more adviseable that one College should continue to suffer an unjust deprivation of rights, than the power of the Crown be canvassed, or the peace of other Collegiate Bodies hazarded by holding out an example to the members to recover rights withheld by the same illegal authority.

FINIS.

J. HODSON, PRINTER, CAMBRIDGE.

ERRATA et ADDENDA.

Page 5 line 23, *for*, Prvoest, *read*, Provost.
.... 8 ... 19, *for*, suc-, *read*, succession.
....12 ... 6, *for*, statutoque, *read*, statutorum.
....14 ... 19, *for*, addendi ipsas, *read*, addendi, ipsas.
....16 ... 18, *for*, concessâ, *read*, concessa.
....18 ... 23, *for*, intentione, *read*, intentioni.
....25 ... 16, *for*, inexperience, *read*, inexpedience.
....28 ... 4, *for*, E. C. P., *read*, E.C. p.
....43 ... 26, *for*, 8, *read*, 30.
....44 after line 16, insert, REPLY of KING's COLLEGE.
....48 ... 4, *for*, præligit, *read*, præeligit.
....55 ... 30, *for*, Dispensation, *read*, a dispensation,
....66 ... 15, *for*, And, *read*, As.
....70 ... 19, *for*, perfectione, *read*, perfectiore.
....*Ib.* after line 21, insert—For an account of the pleadings, which took place before the Visitor at Doctors' Commons, on the 16th and 17th of May, 1815, we refer our readers to the Report of Mr. Philip Williams, printed for Butterworth and Son, Fleet-street.
....81 ... 12, *for*, had, *read*, has.
....84 ... 11, *for*, Boswel, *read*, Hopton.
....87 ... 10, *for*, a, *read*, an.
....97 ... 2, "In the reign," should begin a paragraph.
....*Ib.* ... 34, *for*, Council, *read*, Counsel.
....99 ... 19, *for*, consuetudinis, *read*, consuetudines.
....*Ib.* ... 27, *for*, indulgentâ, *read*, indulgentiâ.
...103 ... 10, *for*, approved, *read*, approved of.
...104 ... 12, *for*, on, *read*, in.